Laws and Resolutions

OF THE

STATE OF MONTANA

PASSED BY THE

Forty-third Legislative Assembly

In Regular and Special Session

Held at Helena, the Seat of Government of Said State,
First Regular Session
January 1, 1973 to March 10, 1973
Special Session
March 12, 1973 to March 24, 1973

PUBLISHED BY AUTHORITY

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Certificate of Authentication

State of Montana)
Department of } ss.
Secretary of State)

I, Frank Murray, Secretary of State of the State of Montana do hereby certify that by virtue of the authority vested in me by law I have prepared for publication and caused to be printed a copy of all laws, resolutions and appropriation measures passed by the Forty-third Legislative Assembly of the State of Montana, at the Forty-third first regular Session commencing January 1, 1973 and concluding March 10, 1973; the Special Session of the Forty-third Legislative Assembly commencing March 12, 1973 and concluding March 24, 1973; that I have caused to be compared the said printed laws, resolutions and appropriation measures with true copies of the original manuscript thereof now on file in my office, and that the following are true, full and correct copies thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Montana, at Helena, the Seat of Government, this 28th day of June, 1973.

Frank Murray

Secretary of State

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OFFICERS AND MEMBERS

OF THE

Forty-third Legislative Assembly of the State of Montana

1973

THOMAS L. JUDGE, Governor

Bill Christiansen, Lieutenant Governor, President of the Senate
Cornie R. Thiessen, President Pro Tem
Percy DeWofe, President Pro Tem (Ad Interim)
Harold E. Gerke, Speaker of the House

Members of the Senate

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY OF RESIDENCE	POLITICS
*Aber, L. M. (Larry)	228 3rd Ave. No., Columbus 59019	7	Stillwater	Republican
Bennett, George T.	P.O. Box 1166, Helena 59601	12	Lewis & Clark	Republican
*Bertsche, Wm. H.	1917 4th Ave. No., Great Falls 59401	13	Cascade	Democrat
*Bollinger, Gordon E.	217 Klein Ave., Glasgow 59230	4	Valley	Democrat
*Boylan, Paul F.	Star Route, Bozeman 59715	11	Gallatin	Democrat
*Breeden, J. W. "Brick"	1202 South Willson, Bozeman 59715	11	Gallatin	Republican
Broeder, Fred O.	Route 4, Kalispell 59901	16	Flathead	Republican
*Carl, Fred G.	P.O. Box 477, Missoula 59801	18	Missoula	Republican
Cochrane, Archie M.	2958 Upper Highwood, Billings 59102	8	Yellowstone	Republican
Darrow, George	804 Midland Bank Bldg., Billings 59101	8	Yellowstone	Republican
Deschamps, G. W. "Por"	Route 2, Mullan Rd., Missoula 59801	18	Missoula	Republican
Devine, John W. (Jack)	Box 1443, Great Falls 59401	13	Cascade	Democrat
DeWolfe, Percy	Box 250, Browning 59517	15	Glacier	Democrat
Drake, Glen L.	So. Annex, Power Block, Helena 59601	12	Lewis & Clark	Republican
*Flynn, Elmer	Route 2, Mullan Rd., Missoula 59801	18	Missoula	Democrat
*Gilfeather, P. J.	2816 4th Ave. So., Great Falls 59401	13	Cascade	Democrat
Goodheart, B. J. "Swede"	P.O. Box 1013, Malta 59538	5	Phillips	Democrat
Graham, Carroll A.	Lodge Grass 59050	1	Big Horn	Democrat
*Groff, W. A. "Bill"	Box 46, Victor 59875	22	Ravalli	Democrat
Hall, Mrs. John Nelson	212 12th St. No., Great Falls 59401	13	Cascade	Democrat
*Harrison, James T., Jr.	1100 Choteau, Helena 59601	12	Lewis & Clark	Republican
*Hazelbaker, Frank W.	Box 430, Dillon 59725	21	Beaverhead	Republican
*Himsl, Matt[1]	305 4th Ave. E., Kalispell 59901	16	Flathead	Republican
James, David F.	P.O. Box 221, Joplin 59531	14	Liberty	Democrat
*Jensen, Arthur N.	P.O. Box 668, Superior 59872	23	Mineral	Democrat
Keenan, P. J.	1112 East Fifth, Anaconda 59711	19	Deer Lodge	Democrat
*Klindt, Herbert J.	402 Alderson Ave., Billings 59102	8	Yellowstone	Republican
*Lowe, William R. "Bill"	1008 Poly Dr., Billings 59102	8	Yellowstone	Republican
Lynch, Neil J.	2101 Harrison Ave., Butte 59701	20	Silver Bow	Democrat
McCallum, George	Niarada 59852	23	Sanders	Republican
McDonald, John K. (Jack)	Belt 59412	13	Cascade	Democrat
*McGowan, Gordon	Rural Route, Highwood 59450	14	Chouteau	Democrat
*McKeon, Luke	316 E. 7th, Anaconda 59711	19	Deer Lodge	Democrat
McNamer, William R.	P.O. Box 1383, Billings 59103	8	Yellowstone	Republican
*McOmber, Gordon	R.R. 2, Fairfield 59436	15	Teton	Democrat
Manning, Dave	Hysham 59038	6	Treasure	Democrat
Mathers, William L.	P.O. Box 267, Miles City 59301	2	Custer	Republican
Moore, Jim	Two Dot 59085	9	Wheatland	Republican
Moritz, Earl	1024 W. Evelyn, Lewistown 59457	10	Fergus	Republican
Nees, Stanley	432 B Street West, Poplar 59255	4	Roosevelt	Democrat
Northey, Harry T.	514 Daly Ave., Missoula 59801	18	Missoula	Republican
*Rosell, Antoinette Fraser	4200 Rimrock Road, Billings 59102	8	Yellowstone	Republican
*Shea, James R. "Jimmy"	604 West Daly St., Walkerville 59701	20	Silver Bow	Democrat
*Siderius, George	c/o Somer's Stage, Kalispell 59901	16	Flathead	Democrat
*Sorenson, C. F. (Smoky)	#9 Brookwood Park, Rte. #1 So., Gt. Falls 59401	13	Cascade	Democrat
Story, Peter R.	Emigrant 59027	11	Park	Republican
Thiessen, Cornie R.	Box 195, Lambert 59243	3	Richland	Democrat
*Turnage, Jean A.	P.O. Box 450, Polson 59860	17	Lake	Republican
*Vainio, Leonard E.	1701 Grand Ave., Butte 59701	20	Silver Bow	Democrat
*Zody, A. A.	503 So. Pearson, Glendive 59330	3	Dawson	Democrat

*Term expires 1975; all other Senators four-year terms.

1. Replaced Bennett, W. F., resigned Dec. 1972.

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House of Representatives

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY OF RESIDENCE	POLITICS
Aageson, Dave	Gildford 59525	14	Hill	Republican
Ainsworth, A. L. (Bud)	4111 Timberlane, Missoula 59801	18	Missoula	Republican
Asbjornson, J. O. "Boots"	P.O. Box 794, Winifred 59489	10	Fergus	Republican
Baeth, William R. (Bill)	805 Minnesota Ave., Libby 59923	23	Lincoln	Democrat
Bardanouve, Francis	Harlem 59526	5	Blaine	Democrat
Barrett, Fred O.	259 SW Maple, Lewistown 59457	10	Fergus	Republican
Baucus, Max S.	525 So. Fifth St. East, Missoula 59801	18	Missoula	Democrat
Bell, John F.	Birdseye, Helena 59601	12	Lewis & Clark	Republican
Bennetts, Barbara K.	25 South Benton, Helena 59601	12	Lewis & Clark	Democrat
Bradley, Dorothy M.	Box 114, Rt. 3, Bozeman 59715	11	Gallatin	Democrat
Brand, Joe	800 Montana Ave., Deer Lodge 59722	19	Powell	Democrat
Brown, Robert J. (Bob)	Route #1, Whitefish 59937	16	Flathead	Republican
Burnett, James H. "Jim"	Star Route, Luther 59051	7	Carbon	Republican
Campbell, William C.	630 Flowerree, Helena 59601	12	Lewis & Clark	Republican
Castles, Ruth B.	York Route, Helena 59601	12	Lewis & Clark	Republican
Clemow, Tom	Box 828, Jackson 59736	21	Beaverhead	Republican
Colberg, Richard A.	631 Terry Ave., Billings 59102	8	Yellowstone	Democrat
Cotton, Robert S.	S.W. Glasgow, Glasgow 59230	5	Valley	Democrat
Cox, Henry S. "Hank"	1439 Colton Blvd., Billings 59102	8	Yellowstone	Republican
Driscoll, John B.	424 S. 2nd St., Hamilton 59840	22	Ravalli	Democrat
East, Vic	Box 83, Forsyth 59327	6	Rosebud	Republican
Edland, Wallace B.	Box 98, Scobey 59263	4	Daniels	Democrat
Ellerd, Robert A.	2206 Bridger Dr., Bozeman 59715	11	Gallatin	Republican
Fagg, Harrison G.	1414 Mystic Dr., Billings 59102	8	Yellowstone	Republican
Fasbender, Larry	Route 1, Box 23, Fort Shaw 59443	13	Cascade	Democrat
Fleming, James F., Jr.	Box 116, Pablo 59855	17	Lake	Democrat
Flynn, James W.	P.O. Box 524, Dillon 59725	21	Beaverhead	Democrat
Forsgren, Wallace O.	Box 225, Bozeman 59715	11	Gallatin	Republican
Galt, Jack E.	Martinsdale 59053	9	Meagher	Republican
Gerke, Harold E.	202 Mountain View Blvd., Billings 59101	8	Yellowstone	Democrat
Glennen, Robert E.	1005 No. 32nd, Billings 59101	8	Yellowstone	Republican
Greely, Michael T.	409 Strain Bldg., Great Falls 59401	13	Cascade	Democrat
Gunderson, Jack	P.O. Box 187, Power 59468	13	Cascade	Democrat
Hageman, Alvin	Stillwater Co. Rural Rte., Broadview 59015	7	Stillwater	Democrat
Hager, Tom	1540 Elaine St., Billings 59101	8	Yellowstone	Republican
Haines, Tom	15 Martha's Crt., Missoula 59801	18	Missoula	Republican
Hall, John C.	1020 Third Ave. No., Great Falls 59401	13	Cascade	Democrat
Halvorson, Ora J.	244 Woodland Ave., Kalispell 59901	16	Flathead	Democrat
Harper, Hal	509 Logan, Helena 59601	12	Lewis & Clark	Republican
Harper, Robert J. "Bob"	68 Missoula Ave., Butte 59701	20	Silver Bow	Democrat
Healy, John E. (Jack)	624 West Granite, Butte 59701	20	Silver Bow	Democrat
Hodges, William C.	106 25th St. No., Great Falls 59401	13	Cascade	Democrat
Holmes, Mrs. Polly	1620 Ave. F., Billings 59102	8	Yellowstone	Democrat
Holtz, Malcolm E.	2625 4th Ave. No., Great Falls 59401	13	Cascade	Republican
Hubing, Lee	Terry 59349	6	Prairie	Republican
Huennekens, Herb	3216 Rimrock Rd., Billings 59102	8	Yellowstone	Democrat
Jacobsen, Glenn	Reserve 59258	4	Sheridan	Democrat
Johnston, George R.	504 3rd St. S.E., Cut Bank 59427	15	Glacier	Democrat
Jones, Tom L.[2]	31 Second St. East, Kalispell 59901	16	Flathead	Republican
Kendall, Orin P.	P.O. Box 563, Thompson Falls 59873	23	Sanders	Democrat
Kessner, Jack E.	154 Riverview C., Great Falls 59404	13	Cascade	Republican
Kimble, Gary	640 S. 6th E., Missoula 59801	18	Missoula	Democrat
Kolstad, Allen C.	Chester 59522	14	Liberty	Republican
Kosena, Albert E. (Al)	106 No. Main, Anaconda 59711	19	Deer Lodge	Democrat
Kvaalen, Oscar S.	Lambert 59243	3	Richland	Republican
Laas, Walter	Chester 59522	14	Liberty	Democrat
Lee, Robert E. (Bob)	1945 Florida, Butte 59701	20	Silver Bow	Democrat
Lien, Orphey "Bud"	P.O. Box 666, Poplar 59255	4	Roosevelt	Democrat
Lockrem, Lloyd C., Jr.	3109 Edmond St., Billings 59102	8	Yellowstone	Republican
Lombardi, Jerry V.	947 Waukesha, Butte 59701	20	Silver Bow	Democrat
Lucas, James P.	1920 Sudlow, Miles City 59301	2	Custer	Republican
Lund, Art	Box 806, Scobey 59263	4	Daniels	Republican
Lundgren, Conrad F.	844 Woodland, Kalispell 59901	16	Flathead	Republican
Lynch, John "J.D."	527 W. Mercury, Butte 59701	20	Silver Bow	Democrat
McKittrick, Pat	4039 Ella Ave., Great Falls 59405	13	Cascade	Democrat
Manuel, Rex	Fairfield 59436	15	Teton	Democrat
Marbut, Gary R.	Grant Creek, Missoula 59801	18	Missoula	Republican
Marks, Robert L. (Bob)	Clancy 59634	12	Jefferson	Republican
Mehrens, John "Sandy"	206 Evergreen, Anaconda 59711	19	Deer Lodge	Democrat
Menahan, William "Red"	1304 West Fifth, Anaconda 59711	19	Deer Lodge	Democrat
Mercer, Wallace W. (Wally)	Box 1556, Billings 59102	8	Yellowstone	Republican
Murphy, John	Box 40, Stanford 59479	14	Judith Basin	Democrat
Nichols, Norris	Rt. 2, Stevensville 59870	22	Ravalli	Republican
Norman, Bill	440 Connell, Missoula 59801	18	Missoula	Democrat
Olson, S. A.	Glendive Med. Cent., Glendive 59330	3	Dawson	Republican
Prevost, Robert C.	Lambert 59243	3	Richland	Democrat
Quilici, Joe	3040 Kossuth, Butte 59701	20	Silver Bow	Democrat
Regan, Ann K. "Pat"	204 Mountain View, Billings 59101	8	Yellowstone	Democrat
Roberts, Joe R.	920 Main St., Libby 59923	23	Lincoln	Democrat

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HOUSE OF REPRESENTATIVES—(Continued)

Rolfe, Tom	1219½ West Koch, Bozeman 59715	11	Gallatin	Republican
Schepens, Henry J.	P.O. Box 591, Sidney 59270	3	Richland	Democrat
Schye, Elmer	P.O. Box 504, White Sulphur Springs 59643	9	Meagher	Republican
Seifert, Carl A.	Box 90, Polson 59860	17	Lake	Republican
Selstad, Tom	133 29th Ave. NW, Great Falls 59404	13	Cascade	Republican
Shelden, Arthur H.	Rt. 1, Box 1650, Libby 59923	23	Lincoln	Democrat
Smith, Carl M.	Olive 59343	1	Powder River	Republican
Staigmiller, John B.	P.O. Box 422, Cascade 59421	13	Cascade	Democrat
Stephens, Robert E.	P.O. Box 218, Dutton 59433	15	Teton	Democrat
Stoltz, Gail	Valier 59486	15	Pondera	Democrat
Swanberg, Gorham E.	P.O. Box 2567, Great Falls 59403	13	Cascade	Democrat
Tierney, John F.	Eden Route, Great Falls 59401	13	Cascade	Republican
Towe, Thomas E.	2640 Burlington Ave., Billings 59102	8	Yellowstone	Democrat
Turman, George	1525 Gerald Ave., Missoula 59801	18	Missoula	Republican
Turner, Clyde A.	920 Kalispell Ave., Whitefish 59937	16	Flathead	Republican
Ulmer, Walter J.	121 So. Merriam, Miles City 59301	2	Custer	Republican
Walborn, John E.	P.O. Box 451, Hardin 59034	1	Big Horn	Republican
Warfield, Bill	Hoffman Route, Livingston 59047	11	Park	Republican
Watt, Robert D.	451 Kensington Ave., Missoula 59801	18	Missoula	Democrat
Yardley, Dan	P.O. Box 482, Livingston 59047	11	Park	Democrat
Zimmer, William (Bill)	P.O. Box 67, Olney 59927	16	Flathead	Democrat

2. Replaced Himsl, Matt, resigned.

3 Compiled and Published from the official files of Frank Murray, Secretary of State, Helena, Montana.

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51		91	An act to amend Section 89-1804, R.C.M. 1947, to remove the maximum limit on levies made for irrigation district administration, maintenance and repairs.	54
52		95	An act amending Section 85-302, R.C.M. 1947, providing for the physical segregation of imitation Indian articles from authentic Indian articles.	55
53		106	An act repealing Section 3-2920, R.C.M. 1947, which provided for the "Montana Wheat Research and Marketing Act" to be in effect for seven (7) years from August 20, 1967.	56
54	67		An act providing that no special risk classification may be established based on anything in a driving record which is three (3) years old or older; amending Section 40-3640, R.C.M. 1947.	56
55	71		An act amending Section 54-132, R.C.M. 1947, by removing the presumption to a deferred imposition of sentence for the first violation of sale of dangerous drugs by a person twenty-one (21) years of age or under.	57
56	146		An act amending Section 11-1814, R.C.M. 1947, by providing for the abolition of residency requirements for policemen.	58
57	184		An act amending Section 32-3602, R.C.M. 1947, allowing counties with more than six thousand (6,000) feet of bridges and less than twenty million dollars ($20,000,000) taxable value an additional bridge levy of two (2) mills.	59
58	204		An act to amend Section 76-107, R.C.M. 1947, to provide for supervisors in conservation districts which include incorporated municipalities within its boundaries.	59
59	236		An act amending Section 82-2210, R.C.M. 1947, to delete reference to side noting and branding of session laws; repealing Section 82-2204, R.C.M. 1947; and providing an effective date.	61
60	285		An act amending Section 11-1814, R.C.M. 1947, providing that every police officer shall meet the minimum qualifying standards for employment promulgated by the board of crime control before employment.	62
61	286		An act amending Section 82A-1207, R.C.M. 1947, by providing that the board of crime control shall have the authority to establish minimum qualifying standards for employment of peace officers, require basic training for such officers, establish minimum standards for equipment and procedures and for advanced in-service training for such officers and establish minimum standards for any law enforcement training schools administered by the state or any of its political subdivisions or agencies; and providing an effective date.	63

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62	287		An act amending Section 16-3705, R.C.M. 1947, providing that no person shall be appointed a special deputy sheriff, marshal, or policeman who does not meet the minimum qualifying standards for employment promulgated by the board of crime control.	64
63		10	An act to provide procedures for gubernatorial return of a bill to the legislature after adjournment to comply with Article VI, Section 10(4) of the 1972 Montana Constitution; amending Section 43-504, R.C.M. 1947.	66
64		27	An act to extend the powers of initiative and referendum to Montana counties; implementing Article XI, Section 8 of the Montana Constitution of 1972.	67
65		29	An act to create the office of consumer counsel to comply with Artitcle XIII, Section 2 of the 1972 Montana Constitution.	70
66		30	An act to create the Montana salary commission, to comply with Article XIII, Section 3 of the 1972 Montana Constitution and providing an effective date.	74
67		48	An act adding the auditor to the state board of land commissioners to implement Article X, Section 4, of the 1972 Montana Constitution; amending Sections 81-103 and 82-904, R.C.M. 1947.	76
68		74	An act amending Section 16-1719, R.C.M. 1947, to require weed control on municipal streets and property.	77
69		80	An act amending Section 75-5933, R.C.M. 1947; providing that "duties of trustees" may require immunizations as a prerequisite for school entrance.	77
70		231	An act amending Sections 3-233 and 3-2917, R.C.M. 1947, to provide for deposit of fees for testing of grain with the department of agriculture.	80
71		282	An act to amend Sections 3-2308 and 3-2315, R.C.M. 1947, eliminating the use and sale of the Montana egg seal; and repealing Sections 3-2307 and 3-2312, R.C.M. 1947.	80
72	17		An act to amend Section 43-310, R.C.M. 1947, to implement Article V, Sections 5 and 6 of the 1972 Montana Constitution by providing that legislators be compensated for each legislative day, receive expenses of thirty-three dollars ($33) per day seven (7) days a week, except during recesses, and receive mileage, expenses and twenty dollars ($20) per day for attending legislative standing committee meetings and mileage for the pre-session caucus, raising mileage from nine cents (9¢) to twelve cents (12¢); and providing for an immediate effective date.	81
73		11	An act to clarify the executive clemency laws to comply with Article VI, Section 12 of the 1972 Montana Constitution; amending Sections 94-9823, 94-9841 and 94-9842, R.C.M. 1947.	82
74		59	An act providing that disability insurance policies and plans covering members of the insured's family as well as the insured shall grant immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured; and amending Sections 40-4002, 40-4101 and 40-4102.	84
75		70	An act providing for interstate parole and probation hearing procedures, requiring notice, assistance of counsel, confrontation of witnesses under certain conditions, a hearing record, and authorizing out-of-state hearings.	88
76		114	An act amending Section 75-7103, R.C.M. 1947, to allow a combination of school buildings, or more than one school bus, to be considered a single purpose requiring only a single school bond election ballot; and providing an effective date.	90
77		172	An act abolishing the mined land reclamation advisory committee.	90
78		182	An act abolishing the sanitarian advisory council.	91

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79		215	An act amending Section 82-1515, R.C.M. 1947, to provide that the board of hail insurance appoint a sufficient number of appraisers each year to appraise the hail losses in the various counties.	91
80		376	An act relating to validation of judicial sales prior to January 1, 1973, of real property and curing defects or irregularities in the issuance of execution, manner of making or conducting the sale, or in the recitals or references in sheriffs' deeds.	92
81		380	An act validating deeds and conveyances in sales of land and personal property made by trustees, executors, administrators and guardians prior to January 1, 1973, curing defects and irregularities in such sales.	92
82		382	An act validating deeds and conveyances made prior to January 1, 1973, which are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.	93
83	140		An act to amend Section 82-3319, R.C.M. 1947, regarding the appointment of architects and consulting engineers.	93
84	149		An act amending Section 21-103, R.C.M. 1947, providing "irreconcilable differences" as an additional cause for divorce; and providing that the factual circumstances supporting that cause need not be pleaded in the particular.	94
85	155		An act amending Section 11-2214, R.C.M. 1947, by providing an additional method of financing of offstreet parking improvement districts and for determining the assessment of each parcel within the district, and providing an effective date.	94
86	157		An act amending Section 11-203, R.C.M. 1947, to provide that no new city or town can be incorporated unless it is more than three (3) miles from any existing incorporated city or town.	98
87	166		An act transferring the functions of the department of law enforcement and public safety pertaining to electrical inspections and code making to the department of professional and occupational licensing, and providing an effective date.	99
88	171		An act to amend Sections 75-7214 and 75-8211, R.C.M. 1947, to allow the trustees of a school district to expend funds collected for rental or lease of school buildings.	100
89	176		An act amending Sections 75-7604, 75-7605 and 75-7607, R.C.M. 1947, relating to the requirements for textbook dealers to file a copy of all textbooks offered for sale to school districts with the superintendent of public instruction; and to repeal sections 75-7606 and 75-7611, R.C.M. 1947.	101
90	185		An act to amend Section 93-8625, R.C.M. 1947, to allow poor persons to commence or defend actions before administrative tribunals witout being subject to costs.	102
91	210		An act correcting certain errors and omissions and to clarify the intent of certain sections of the 1971 codification and general revision of Title 75; and amending Sections 75-5916, 75-5941, 75-6303, 75-6410, 75-6412, 75-6508, 75-7810 and 75-8205, R.C.M. 1947.	103
92	288		An act to include pupils in state institutional schools meeting eligibility requirements in the school food services program.	103
93	6		An act to implement Article II, Section 18, concerning sovereign immunity by providing availability of insurance coverage for governmental entities; Amending Section 87-701, R.C.M. 1947; repealing Section 83-706, R.C.M. 1947; and providing for an effective date.	109
94	9		An act implementing Article II, Section 14, "adult rights" of the 1972 Montana Constitution, by providing persons eighteen (18) years of age or older with certain rights; and amending Sections 3-1503, 4-161, 4-330, 4-337, 4-413, 4-439, 4-502, 4-504, 4-506, 11-951, 11-1602, 11-1817, 26-915,	

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			31-127, 31-128, 40-5324, 41-1135, 41-1136, 41-2304, 48-143, 59-301, 61-203, 64-101, 66-1305, 66-3208, 69-1509, 69-1604, 75-8702, 80-1415, 81-407, 81-908, 93-1301, 93-100-2, 94-2721, 94-3702, 94-35-106, and 94-35-106.2, R.C.M. 1947.	109
95	32		An act creating a judicial standards commission and specifying the composition and the qualifications of the members in compliance with Article VII, Section 11 of the 1972 Montana Constitution.	134
96	50		An act to amend Section 82-2202, 82-2203, 82-2208, 82-2211 and 82-2212, R.C.M. 1947, to transfer the functions of the secretary of state relating to printing and distribution of the House and Senate journals and session laws to the legislative services division of the legislative council; deleting from Section 82-2210, R.C.M. 1947, references to sidenoting; repealing Section 82-2204, R.C.M. 1947.	136
97	57		An act amending Section 81-433, R.C.M. 1947, providing for an increase in the grazing fee.	141
98	59		An act to amend Section 71-235, R.C.M. 1947, by increasing the relatives contribution scale to present income and consumer price levels.	142
99	63		An act providing for the automatic disincorporation of Montana cities or towns and procedures for disincorporation by petition in cities or towns; providing for elections to determine the question; establishing procedures for managing existing debt; defining the effect of disincorporation; and repealing Sections 11-306 and 11-307, R.C.M. 1947.	144
100	73		An act removing references to the 1889 Constitution from the codes and amending or deleting other statutory language to make it comply with the 1972 Constitution; amending Sections 11-966, 11-1302, 11-2216, 11-3229, 16-2008, 16-2010, 16-2501, 16-2504, 16-2505, 16-3203, 19-103.1, 23-3012, 32-2601, 32-3802, 32-3804, 36-203, 36-205, 40-4705, 41-1603, 43-508, 46-1903, 59-203, 59-413, 60-125, 66-2604, 72-102, 75-5701, 75-5801, 75-5802, 75-6203, 75-6410, 75-7104, 75-8113, 79-1201, 79-1206, 79-1211, 79-1212, 79-1215, 79-2411, 81-101, 81-905, 81-1001, 81-1102, 81-1712, 82-501, 82-3801, 82-3802, 82-3803, 84-404. 84-701, 84-1901, 84-3804, 84-4713, 84-5214, 91-520, 93-4215 and 93-4216, R.C.M. 1947; and repealing Sections 3-101.1, 4-348, 16-405, 16-2407, 23-2701.1, 41-1609, 75-6410.1, 84-211, and 84-707, R.C.M. 1947.	147
101	78		An act amending Section 80-2310, R.C.M. 1947, relating to the establishment of a mental retardation center at Glendive by authorizing such center to accept and admit mentally retarded persons not residing in Montana when the state of Montana has agreed to do so by agreement with any other state.	179
102	90		An act to amend Section 46-2515, R.C.M. 1947, by deleting the requirement of proof of purity of breed of sires used for artificial insemination; and abolishing license procedures for artificial insemination; and to amend Section 46-2505; and repealing Sections 46-2501, 46-2504, 46-2506, 45-2507, 46-2508, 46-2509, 46-2510, 46-2511, 46-2512, 46-2513, and 46-2514, R.C.M. 1947.	180
103	98		An act amending Section 16-2041, R.C.M. 1947, to permit the board of county commissioners to use excess amounts from the sinking and interest funds for payment of additional expenses on the project for which a bond was sold.	181
104	100		An act amending Section 40-3640, R.C.M. 1947, to require that revenues and profits from reserves be considered in the determination of insurance rates.	182
105	105		An act amending Section 75-6112, R.C.M. 1947, requiring school district trustees to notify the district superintendent or the county high school principal in writing of their intent to terminate his services.	183
106	116		An act providing for the repeal of Sections 92-501, 92-503, 92-504, 92-505, 92-610, and 92-810, R.C.M. 1947, which are no longer necessary in the Workmen's Compensation Act, Title 92, R.C.M. 1947.	184
107	118		An act providing for a definition of "temporary total disability" in the Workmen's Compensation Act.	185

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108	119		An act providing for a definition of "permanent partial disability" in the Workmen's Compensation Act.	185
109	120		An act providing for a definition of "permanent total disability" in the Workmen's Compensation Act.	186
110	150		An act to amend Section 26-202.1, R.C.M. 1947, requiring nonresident juveniles under the age of eighteen (18) to have completed a course in the safe handling of firearms before purchasing a nonresident hunting license; and providing an effective date.	186
111	160		An act amending Section 89-1301, R.C.M. 1947, to raise the limit from ten thousand dollars ($10,000) to twenty-five thousand dollars ($25,000) for which irrigation district commissioners can contract for district business.	191
112	186		An act to repeal Section 66-1928, R.C.M. 1947, by eliminating the requirement that moneys credited to the board of real estate not used by December 31 revert to the general fund.	195
113	193		An act to amend Section 75-6904, R.C.M. 1947, to redefine the eligibility of school districts for an average number belonging increase due to an unusual enrollment increase.	196
114	221		An act to provide that county treasurers may take out memberships in certain organizations at the expense of the county.	198
115	222		An act amending Section 5-518, R.C.M. 1947, to provide for state commercial and savings banks charging off unmarketable capital stock as an investment loss, as equivalent to sale thereof; and providing an effective date.	198
116	224		An act amending Section 26-1008, R.C.M. 1947, requiring collectors of fish and game for scientific purposes to be representatives of accredited schools, colleges, universities or other institutions; permitting representatives of governmental agencies to collect fish or game for scientific study; limiting requirement for collectors' permits or licenses to persons studying protected fish or game animals; providing for supervision of collectors' qualifications by direcctor of fish and game; allowing group use of permits; and requiring reports.	199
117	225		An act to repeal Section 79-813, R.C.M. 1947, relating to the disposal of property acquired from escheated estates; and providing an effective date.	200
118	232		An act determining the limitation for loans to a limited partner; amending section 5-523, R.C.M. 1947.	201
119	234		An act granting to state banks the power to engage in any business or activity permitted to national banks with the consent of the department of business regulation.	202
120	270		An act amending Section 11-2010, R.C.M. 1947, by clarifying distance requirements for cities, towns or fire districts established in an unincorporated area to contract to furnish or receive fire protection service; and to eliminate the one (1) mile requirement for service to public or private parties.	202
121	291		An act abolishing the passenger tramway safety board and transferring its functions to the department of administration; and providing an effective date.	204
122	297		An act designating the department of health and environmental sciences as the agency to administer state funds to be used for aiding local governments which were not entitled to state matching funds under the provisions of Section 69-4808.1, R.C.M. 1947, for construction of water pollution control facilities.	204
123	307		An act to implement Article XI, Section 3, of the 1972 Montana Constitution by providing for optional forms of county government; procedures to adopt and initiate an optional form of county government; adding county attorney and clerk of district court to the list of offices that may be consolidated; deleting the nonsuccession provision for county treasurer; amending Sections 16-901, 16-2406 and 16-2412, R.C.M. 1947; and repealing Sections 16-2403, 16-2407 and 16-3901 through 16-3923, R.C.M. 1947.	205

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124	321		An act providing for the exemption of employees of the department of fish and game from restrictions relating to the herding, driving capturing, taking, locating or concentrating of fish or game by motor vehicles, airplanes or snowmobiles while such employees are performing their duties; amending Sections 26-301 and 53-1020, R.C.M. 1947.	215
125	323		An act amending Section 23-3202, R.C.M. 1947, providing that electon judges must be members of the political party they represent.	219
126	324		An act providing that lists furnished to the clerks and recorder under Section 91-4458, R.C.M. 1947 shall be used by the clerks and recorder to cancel the registration of deceased electors from the election rolls.	220
127	329		An act amending Section 16-1803, R.C.M. 1947, to require counties to let for bid all contracts calling for construction or purchases in excess of four thousand dollars ($4,000) after advertisement for bids.	220
128	334		An act amending Section 44-411, R.C.M. 1947, to transfer the responsibility for indexing the laws of Montana from the law librarian to the legislative services division of legislative council; and repealing Section 44-412, R.C.M. 1947.	222
129	357		An act to provide that a county attorney be elected in each county for a four (4) year term; and amending Section 16-2406, R.C.M. 1947.	222
130	372		An act to amend Section 16-1008A, R.C.M. 1947, to allow the county commissioners and five (5) lay members appointed by them to manage county buildings and improvements.	224
131	384		An act requiring cities and towns making the all-purpose levy to deposit money received from other sources in the all-purpose general fund and requiring that the provisions of the all-purpose levy statutes be construed in conjunction with the municipal budget law.	225
132	390		An act amending Section 23-3001, R.C.M. 1947, relating to the highway patrol submitting new-voter lists; and by providing that the lists be prepared in quadruplicate.	225
133	402		An act amending Section 35-103, R.C.M. 1947, providing that an elderly family is one the head of which is sixty (60) years of age or older.	226
134	417		An act amending Section 11-3909, R.C.M. 1947, relating to the disposal of real property in areas of urban renewal.	228
135	424		An act prohibiting the filing of false mining claims; providing for a penalty; and providing for an effective date.	230
136		6	An act transferring the office of state treasurer to the department of administration for administrative purposes only, to comply with Article VI, Section 7 of the 1972 Montana Constitution.	231
137		19	An act to amend Sections 16-514, 75-5707, 75-6503, 75-6517, 75-6532, 75-6534, 75-6806, 75-6906 through 75-6908, 75-6915, 75-6916, 75-6927, and 75-8107, R.C.M. 1947; to eliminate the census of school age children; and to provide for the distribution of interest and income moneys through state equalization aid to comply with Article X, Section 5(1) of the 1972 Montana Constitution; and to repeal Sections 75-5708, 75-5810, 75-5936 through 75-5938, and 75-6909 through 75-6911, R.C.M. 1947.	231
138		148	An act to repeal Sections 3-2201, 3-2201.1, 3-2202, 3-2203, 3-2204, 3-2205, 3-2207, 3-2209, 3-2210, 3-2211, and 3-2212, R.C.M. 1947, relating to poultry improvement.	243
139		150	An act to provide for a special license classification and fee for the hunting, shooting and taking of mountain lion; amending Section 26-202.1, R.C.M. 1947.	244
140		175	An act amending Section 94-9838, R.C.M 1947, to require a hearing on a parole violation.	249

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141		210	An act to amend Sections 32-21-155.1 and 75-7002, R.C.M. 1947, to require the semiannual inspection of school buses in compliance with standard no. 17 of the highway safety program issued by the United States department of transportation.	250
142		269	An act amending Section 32-1213, R.C.M. 1947, relating to the confidentiality of automobile accident reports filed pursuant to the uniform accident reporting act by providing that such reports may be examined by certain persons.	251
143		318	An act to approve and legalize and adopt as prima facie the laws of Montana the second replacement of part 2 of volume number 4 of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said codes; and providing an effective date.	252
144		325	An act to amend Sections 94-1430 and 94-1431, R.C.M. 1947, to extend the period of time for reporting campaign expenses to twenty (20) days.	253
145		377	An act validating, ratifying, approving and confirming bonds and other instruments or obligations, heretofore issued by public bodies of this state, and all proceedings heretofore taken by such public bodies, to authorize and issue such bonds, instruments and other obligations, however described; providing that this act may be cited as "The 1973 Bond Validating Act"; containing a repealing clause; and providing an effective date.	255
146		378	An act to validate records of court proceedings prior to January 1, 1973, containing defects, omissions, informalities or irregularities in obtaining a judgment or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered.	256
147		379	An act validating certain instruments affecting real property and which were erroneously executed or acknowledged prior to January 1, 1973; imparting notice by recording thereof; and providing that duly certified copies thereof may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded.	257
148		381	An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and all instruments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right, title and interest of the county in and to the property described or covered.	258
149	43		An act to amend Section 75-6808, R.C.M. 1947, to allow all classes of school districts to contract without letting bids for less than four thousand dollars ($4,000).	258
150	95		An act to amend the unit ownership act to provide that lessees of a condominium unit may be treated as owners and to provide for sale of units before construction to be under the control of the department of business regulation; amending Sections 67-2302 through 67-2305, 67-2314, 67-2319, 67-2322 and 67-2323, R.C.M. 1947.	260
151	117		An act providing for inclusion of the state fund within the definition of "insurer" in the workmen's compensation act, Title 92, R.C.M. 1947; and amending Section 92-435, R.C.M. 1947.	268
152	53		An act to provide a definition of residency to determine county or state responsibility for financial support of general relief recipients; and to repeal Section 71-302, R.C.M. 1947.	269
153	92		An act to amend Section 89-1208, R.C.M. 1947, to raise the compensation of irrigation district commissioners from ten dollars ($10) to twenty dollars ($20) and to provide a mileage allowance of twelve cents ($.12) per mile.	269

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154	113		An act providing for a definition of "employer" and providing comprehensive coverage extending to subcontractors in the workmen's compensation act, Title 92, R.C.M. 1947; and repealing Section 92-410, R.C.M. 1947.	270
155	122		An act providing for compensation for injuries producing partial disability under the workmen's compensation act; repealing Section 92-703, R.C.M. 1947.	271
156	269		An act amending Section 11-3831, R.C.M. 1947, to require that a master plan include a study of available types of new housing.	272
157		9	An act to provide procedures for the amendatory veto in accordance with Article VI, Section 10(2) of the 1972 Montana Constitution; amending Section 43-502, R.C.M. 1947.	273
158		89	An act to amend Section 69-5104, R.C.M. 1947, to require that a written report of all autopsies of a human body be sent to the physician attending the person at time of death and to the hospital and skilled nursing facility where the person died in addition to other recipients as presently provided by law.	275
159		104	An act to amend Section 87-148, R.C.M. 1947, providing for additional definitions of base period and benefit year; amendments to conform with reorganization as provided in Title 82A, Chapter 10, R.C.M. 1947; amendments to clarify employer coverage; and deletion of language no longer applicable.	275
160		138	An act amending Section 11-1803, R.C.M. 1947, increasing the probationary period served by newly appointed policemen from six (6) months to one (1) year.	284
161		139	An act to amend Section 11-3207, R.C.M. 1947, to provide for a method of selection of commissioners under commision-manager plan.	285
162		151	An act to provide for the exception of mountain lion from the species of game animals as to which the removal of trophy parts or wasting and abandonment of carcass thereof is prohibited; amending Section 26-307, R.C.M. 1947.	285
163		170	An act to amend Section 87-109, R.C.M. 1947, providing for clarification of the definition of non-profit organizations eligible to elect to make payments in lieu of contributions; providing for group election by nonprofit organizations; providing for termination of election to make payments in lieu of contributions and providing for appeal rights of non-profit organizations making payments in lieu of contributions; providing amendments to conform with reorganization as required in Title 82A, Chapter 10, R.C.M. 1947; and deletion of language no longer applicable.	286
164		186	An act abolishing the advisory council on communications.	292
165		188	An act providing for nomination by petition in first class elementary districts; amending Section 75-5915, R.C.M. 1947; and repealing Section 75-5914, R.C.M. 1947.	293
166		198	An act to amend Sections 75-6917 and 75-6918, R.C.M. 1947, to remove the requirement that the board of public education direct the payments of state equalization aid in the months of December and April and to remove the requirement that the superintendent of public instruction report to the board of public education the amount of state equalization funds in July and December.	294
167		206	An act to amend Sections 26-201, 26-202.1 and 26-202.2, R.C.M. 1947, by eliminating bison or buffalo as a big game animal; providing for protection of wild buffalo; defining wild buffalo.	296
168		209	An act to amend Section 8-101, R.C.M. 1947, deleting the term "school children" and inserting the term "pupils or other students" and providing that such pupils or other students enrolled in classes are included in the school bus exemption "or while engaged in transportation movements related to school activities which are sponsored or supervised by school authorities"; and providing for an effective date.	303

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169		230	An act to amend Section 75-7019, R.C.M. 1947, to clarify the intent of the law which stipulates the distance that a family must reside from a school bus stop in order to be entitled to individual transportation.	305
170		308	An act amending Section 45-1003, R.C.M. 1947, relating to liens for labor and material furnished for use of oil or gas wells or pipelines by deleting any reference to perfecting, priority, and method of filing such liens; providing how such liens are perfected; providing for the date such liens shall arise; providing for the preference of such lien over certain other liens; providing that all liens affixed by virtue of Chapter 10 of Title 45, R.C.M. 1947, upon the same property shall be of equal standing; and providing for the priority of such lien over mortgage or other liens.	308
171		416	An act to amend Section 23-3101, R.C.M. 1947, relating to election precincts, by providing that county commissioners may change precinct boundaries in the years in which general biennial elections are held, when such changes are required to conform to a reapportionment plan.	309
172		435	An act amending Section 8-102, R.C.M. 1947, providing that class C carriers distributing, delivering or collecting wares, merchandise or commodities, or transporting persons, shall do so under six (6) contracts, charters, agreements or undertakings or less annually; that every class C motor carrier providing such transportation service by means of more than six (6) contracts, charters, agreements or undertakings shall be deemed providing common carriage and shall operate under a class B motor carrier certificate in lieu of such class C certficate (sic); that all class C motor carriers must submit to this commission the names and addresses of all persons, firms, corporations, or other legal entity with whom the said class C carrier has executed a contract, agreement, or undertaking for the distribution, delivery or collection of wares, merchandise or commodities, or transporting persons; and providing for an effective date.	310
173		436	An act providing that every motor carrier may petition the the commission to suspend its intrastate operating authority for a period not to exceed six (6) months; providing that an additional six (6) months' suspension may be requested and granted, but no other; that such suspension be granted upon a showing of present absence of public convenience and necessity or other showing of matters affecting motor carrier transportation; and providing an effective date.	312
174		486	An act amending Section 8-101, R.C.M. 1947, deleting certain provisions under definition of term "motor vehicle"; providing further for the definition of "motor vehicles" to include all vehicles, motor trucks, tractors or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state and any trailer, semitrailer, dollie or other vehicle drawn thereby; and providing for an effective date.	313
175	258		An act amending Section 82-808, R.C.M. 1947, concerning registration fees in the Montana apiculture laws; and providing an effective date.	315
176	273		An act to amend Section 75-7116, R.C.M. 1947, to remove the taxpayer status as a requirement to vote in school district bond elections.	315
177		63	An act to amend Section 53-438, R.C.M. 1947, to provide for noncancellation of motor vehicle liability insurance and no increase in premium when the insured or the operator is not at fault.	316
178		100	An act providing deleting the requirements for granting a motor vehicle license to a person afflicted with epileptic type seizures; amending Section 31-127, R.C.M. 1947.	319
179		103	An act amending Section 69-6013, R.C.M. 1947, relating to the duty of county attorney with respect to refuse disposal districts and boards; providing an exception to the duty of county attorney to defend suits; providing for employment of counsel by a refuse control district or board in certain cases.	320

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180		113	An act amending Section 81-2404, R.C.M. 1947, to permit transfer of funds among state land income accounts for the purposes of defraying the costs of developing the lands.	321
181		115	An act to amend Section 87-110, R.C.M. 1947, providing period of coverage and election for coverage by exempt employers and political subdivisions; amendments to conform with reorganization as provided in Title 82A, Chapter 10, R.C.M. 1947; and deletion of language no longer applicable.	321
182		116	An act to amend Section 25-508, R.C.M. 1947, to provide for expenses for county treasurers when attending a general association meeting.	323
183		129	An act to amend Section 93-1906, R.C.M. 1947, to increase annual salary of court reporters.	325
184		130	An act amending Section 82-1208, R.C.M. 1947, relating to appointment of acting fire marshals, special deputy fire marshals and fire marshal's employees.	325
185		134	An act to amend Section 15-2014, R.C.M. 1947, to allow compensation to broker-dealer for certain exempt transactions.	326
186		163	An act to amend Section 95-1005, R.C.M. 1947, to require cities to remunerate appointed counsel necessary in proceedings involving the violation of city ordinances.	329
187		164	An act to amend Section 16-3203, R.C.M. 1947, to provide four (4) year terms for county auditors under the 1972 Montana Constitution which has no limitation on terms of legislatively created county offices; and to remove the requirement that the auditor be a male person.	329
188		180	An act abolishing the state conservation commission, formerly the soil conservation committee; and repealing Section 82A-1507, R.C.M. 1947.	330
189		190	An act to amend Section 75-7103, R.C.M. 1947, to permit issuance of school bonds for vocational-technical centers.	330
190		218	An act to amend Section 89-1706, R.C.M. 1947, to limit to a period of eight (8) years after maturity of the obligation the lien on lands in an irrigation district created by the obligation.	331
191		219	An act to amend Section 93-2624, R.C.M. 1947, to provide a limitation during which actions for professional negligence can be commenced against nursing home administrators and long-term care facilities.	332
192		229	An act to amend Section 32-21-149, R.C.M. 1947, to allow school buses to use studded tires from August 15 through the following June 15.	333
193		235	An act amending Section 16-2803, R.C.M. 1947; providing for common jails among counties with operation and maintenance costs to be prorated among the using counties; eliminating the requirement that there be a jail in each county seat; eliminating statutory limitation of one thousand dollars ($1,000) which counties may spend on a common jail; and repealing Sections 16-2801 and 16-2802, R.C.M. 1947.	334
194		239	An act to amend Section 50-1305, R.C.M. 1947, to require the permission of the owner of surface rights before mining or prospecting operations may be commenced.	335
195		245	An act to amend Section 26-202.2, R.C.M. 1947, to provide that any person who has killed or taken a mountain goat shall not be eligible to apply for another license for the next succeeding seven (7) years.	335
196		252	An act amending Section 66-804, R.C.M. 1947, changing the name of the Montana examining board of cosmetology to board of cosmetologists; changing the membership thereof; and renumbering the section as section 82A-1602.8.	336
197		267	An act to amend Section 93-9908, R.C.M. 1947, relating to contents of the complaint in eminent domain proceedings and who must be styled defendants therein.	337

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199		362	An act amending the volunteer firemen's pension plan under the volunteer firemen's compensation act; amending Section 11-2022 and Section 11-2023, R.C.M. 1947; and providing an effective date.	339
200		364	An act to amend Section 84-1855, R.C.M. 1947, relating to the refund of gasoline license tax on gasoline used off the public highways by establishing a procedure to be followed by the claimant and the department of revenue in estimating the amount of the gasoline license tax refund; and by prescribing records of use to be kept by claimants who do not elect to estimate the amount of gasoline tax to be refunded; and providing an effective date.	343
201		484	An act to amend Section 23-3023, R.C.M. 1947, by modifying the requirement of posting lists of registered voters in each precinct.	346
202	123		An act providing compensation for injuries producing total permanent disability under the workmen's compensation act; repealing Section 92-702, R.C.M. 1947.	347
203	130		An act providing compensation for injuries causing death under the workmen's compensation act; repealing Section 92-704, R.C.M. 1947.	348
204	135		An act providing for more than twenty-six (26) weeks of temporary total disability compensation benefits in cases of permanent injury in nonscheduled injuries; amending Section 92-709, R.C.M. 1947.	349
205	137		An act providing for deletion of language referring to major and minor dependents not residing in the United States at the time of the injury; amending Section 92-708, R.C.M. 1947.	351
206	174		An act amending Section 40-3649, R.C.M. 1947, by providing an annual fee for a license to act as a rating organization.	351
207	177		An act abolishing the liquor control board and transferring its functions to the department of revenue and board of equalization; repealing Section 82A-1805, R.C.M. 1947; and providing an effective date.	352
208	211		An act amending Section 60-144, R.C.M. 1947, to require drillers to furnish cores and cuttings for core holes and tests less than one thousand (1,000) feet in depth; and providing an effective date.	353
209	230		An act revising Section 89-702, R.C.M. 1947, relating to the construction of dams and dikes, for drafting style; and amending Section 89-702.1, R.C.M. 1947, relating to the jurisdiction of the department of natural resources and conservation in inspecting dams.	354
210	242		An act to amend Section 95-508, R.C.M. 1947, to require a hearing to determine a defendant's present mental condition after the defendant has been acquitted in a criminal proceeding by reason of a mental disease or defect excluding responsibility; and setting the burden of proof in such proceedings as a preponderance of the evidence.	356
211	259		An act amending Sections 82A-202 and 82A-1202, R.C.M. 1947, transferring the functions of the state building code council from the department of law enforcement and public safety to the department of administration; and providing an effective date.	358
212	260		An act amending Section 75-6608, R.C.M. 1947, relating to the procedures for application, approval, and criteria for the isolation of an elementary or high school.	360
213	275		An act to amend Section 62-503 to pay members of the board of horse racing; and providing an effective date.	361
214	310		An act deleting the mandatory public hearing from the requirements to receive a weather modification permit and make the holding of such public hearing permissive; author-	

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			izing the department of natural resources and conservation to assess the applicant for the costs incurred by the department in holding the hearing; and amending Section 89-318, R.C.M. 1947, and provide an effective date.	362
215	322		An act to amend Section 23-3013, R.C.M. 1947, by extending the time in which the registrar must make a survey; and extending the number of elections before a voter's registration card is canceled (sic).	363
216	325		An act amending Section 23-3405, R.C.M. 1947, by providing for the elimination of the requirement for proxies in county conventions of political parties.	364
217	337		An act to amend Section 91-3108, R.C.M. 1947, to include coal as a mineral which an executor, administrator or guardian can lease for ten (10) years and thereafter.	365
218	353		An act to amend Section 75-6323, R.C.M. 1947, providing for the audit of school district extracurricular funds by the state examiner.	366
219	368		An act to amend Section 31-142, R.C.M. 1947, permitting driver's license cancellation for cause.	367
220	404		An act providing for the conservation of strippable and marketable coal, and prohibiting the waste thereof; providing for the submission of strip mining plans, to the department of state lands; assigning duties to the state board of land commissioners; providing penalties; and providing an effective date.	368
221	426		An act allowing all agencies of state government to give assistance to tribal councils or their official designees assistance on any matter relating to coal development on Indian lands, and providing for recovery of costs thereof.	371
222	436		An act to provide for the voluntary payment of personal injury or property damage claims without such payment damage claims without such payment constituting an admission of liability.	372
223	441		An act to remove requirements of residency and minority in probate of estates of net value less than ten thousand dollars ($10,000); and amending Sections 91-5301, 91-5304, 91-5305, 91-5308 and 91-5310, R.C.M. 1947.	373
224	456		An act providing that compensation for legislators when engaged in official business during an interim period is computed in quarters of days.	375
225		183	An act abolishing the occupation health advisory committee.	375
226		191	An act to amend Section 75-7709, R.C.M. 1947, providing for an alternative source for funding construction of vocational-technical centers.	376
227		261	An act providing for infant screening; providing the department of health and environmental sciences require tests for newborn infants; providing for administration of the act; regulations; requiring the availability of, and if requested furnishing of assistance and services of the department of health and environmental sciences and the Boulder River school and hospital if tests are reported positive; and repealing Section 69-4116, R.C.M. 1947.	377
228		263	An act providing for a standard serological test for women seeking prenatal care; providing for definitions; laboratory testing, certificate form, duties of physicians and other persons required to take sample; disclosure of report, confidentiality of report, report to department of health of positive reports of test, use of information by department, when, report of birth to state if test made: exemption from provisions of act; and repealing Sections 69-4612, 69-4613, 69-4614 and 69-4615, R.C.M. 1947.	378
229		271	An act amending Section 28-602, R.C.M. 1947, to provide that a rural fire control chief may be a regular county officer, or other person; amending Section 28-604, R.C.M. 1947, to make clear that fire companies and fire districts in unincorporated areas are excluded; and providing an effective date.	381

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231		374	An act to amend Section 8-131, R.C.M. 1947, to provide that affidavits or other evidence as the commission may determine must accompany applications for temporary authority to specify in detail reasons for supporting the application for temporary authority and the term within which the temporary authority would be required; and providing an effective date.	382
232		400	An act amending Section 8-118, R.C.M. 1947; requiring every motor carrier to file with the public service commission a report on or prior to the thirty-first day of March of each year; and providing for an effective date.	383
233		408	An act to amend Section 8-101.2, R.C.M. 1947, exempting from the motor carrier act any commercial transportation movement of livestock in any motor vehicle having a cargo bed of twenty-two (22) feet in length or less.	384
234		431	An act to amend Section 41-1304, R.C.M. 1947, by increasing the statute of limitations for an employee to recover penalties from six (6) months to eighteen (18) months for violations of the payment of wages provisions in Chapter 13, Title 41, R.C.M. 1947.	385
235		434	An act to amend Section 8-104.5, R.C.M. 1947, providing that upon the filing of a change or revision of any rate, fare, charge, classification or rule of service by filing tariff sheet or sheets, every motor carrier upon suspension by the commission of the tariff sheet or sheets must submit prepared testimony and exhibits to support such changes or revisions; providing that the complaint of any interested party may be filed with the board within twenty (20) days, and after the date of filing such changes or revisions; providing that the board may suspend the operation of such rate, fare, charge or classification for a period not to exceed one hundred eighty (180) days; and providing an effective date.	385
236		472	An act providing that the suspension of any intrastate operating authority as provided in Section 8-107.1, R.C.M. 1947, for a period of twelve (12) consecutive months is a prima facie presumption of absence of public convenience and necessity; providing that if, after notice and hearing, the carrier is unable to prove the existence of public convenience and necessity or existing demand for the transportation service, the commission is authorized to cancel such certificate; and providing an effective date.	387
237		491	An act to amend Section 23-3318, R.C.M. 1947, changing the timing for the filing of certificates of nomination.	388
238	189		An act requiring the office of the governor to review the executive branch of state government and report to the legislature.	389
239	213		An act providing for legislative review of administrative rules.	390
240	218		An act providing for all businesses to be classified similarly for store license fee purposes; raising said license fees five dollars ($5) and crediting said increase for administration of the unfair practices act by the department of business regulation; amending Sections 84-2402, 84-2404, 84-2405, 84-2407, 84-2410, 84-2412, R.C.M. 1947; and repealing Section 84-2406, R.C.M. 1947.	390
241	238		An act amending Sections 75-6809, 75-6810, 75-6811, 75-6812 and 75-6805, R.C.M. 1947, to repeal the requirement that the county treasurer maintain duplicate accounting records for school districts and to allow school districts the option of issuing warrants in single copy or in triplicate copy.	393
242	249		An act to amend Section 4-303, R.C.M. 1947, "closing hours for licensed retail beer establishments," by deleting any reference to biennial general or primary elections.	397
243	327		An act to amend Section 66-2904, R.C.M. 1947, to provide that the board of massage examiners shall convene after each	

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			appointment to the board and elect a president, vice president and secretary treasurer; and to provide for regular meeting.	398
244	351		An act to prohibit the use of weighing devices in trade or commerce which are not licensed by the division of business regulations; establishing license fees; and providing an effective date.	399
245	359		An act to amend Section 75-7008, R.C.M. 1947, to allow the tendering of an individual transportation contract to a parent or guardian of a school district to fulfill the responsibility of the school district for transportation; and providing an effective date.	399
246	361		An act requiring the state treasurer to credit the state highway account in the earmarked revenue fund with moneys received under the act of congress of February 25, 1920.	400
247		174	An act to amend Sections 46-801, 46-802, 46-803 and 46-804, R.C.M. 1947, requiring livestock brand inspection before change of ownership of six (6) or more animals or removal from county; and providing a lifetime horse transportation permit to owner.	401
248		262	An act providing for redefining a premarital standard serological test to include additional tests; and amending sections 48-134, 48-136 and 48-137, R.C.M. 1947.	408
249		332	An act amending Section 84-6701, R.C.M. 1947, to specifically adopt the multistate tax compact provisions relating to interstate audits.	410
250		459	An act to change the name of the department of law enforcement and public safety to the department of justice; amending Sections 82A-104, 82A-202, 82A-703, 82A-802, 82A-803, 82A-1201, 82A-1202, 82A-1203, 82A-1205, 82A-1602 and 82A-1605, R.C.M. 1947; adding a new section; and providing an effective date.	426
251	125		An act providing for a definition of "independent contractor" in the workmen's compensation act; and repealing Section 92-438, R.C.M. 1947.	436
252	126		An act providing for medical and hospital services to be furnished injured claimants under the workmen's compensation act; repealing Section 92-706, R.C.M. 1947.	436
253	136		An act providing for amendatory language to an existing funding procedure provided in a new section; and repealing Section 92-116, R.C.M. 1947.	437
254	138		An act providing for a subsequent injury fund in the workmen's compensation act; and repealing Section 92-709A, R.C.M. 1947.	438
255	192		An act to amend Section 75-6915, R.C.M. 1947, to reconcile said section of law with Section 75-6902, R.C.M. 1947, by deleting the provision for a nonaccredited school to receive county equalization moneys.	441
256	200		An act amending Section 82A-404, R.C.M. 1947, to abolish the board of trade and transfer its functions to the department of business regulation; and repealing Sections 27-301 through 27-317, 70-201 through 70-233, and Section 82A-405, R.C.M. 1947; and providing an effective date.	443
257	203		An act to allow the registered owner of a passenger motor vehicle registered with the registrar of motor vehicles to obtain personalized license plates.	444
258	207		An act adopting the western interstate nuclear compact.	445
259	274		An act to amend Sections 75-5914 and 75-5915, R.C.M. 1947, to allow write-in voting and elections on a regular school election day for first class school district trustee elections.	456
260	304		An act to amend Section 53-438, R.C.M. 1947, to prohibit the attachment of reduced limits endorsements to motor vehicle liability policies.	457
261		82	An act to amend Section 26-202.1, R.C.M. 1947; lowering	

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262		145	An act to amend Section 87-107, R.C.M. 1947, clarifying the determination process for labor disputes; eliminating the withholding of benefits during the appeal period; providing for a finality of determination; eliminating the option of a three (3) member appeal board and retaining a single member appeals referee; providing for promptness of the payment of benefits; providing for the transmittal of appealed decisions to the board of labor appeals; providing amendments to conform with reorganization as required in Title 82A, Chapter 10, R.C.M. 1947; and correcting language.	465
263		244	An act to exempt police pension payments payable under Sections 11-1821 and 11-1814, R.C.M. 1947, from attachment and other legal processes.	467
264		253	An act providing for waiver of time requirements in filing of claim by division of workmen's compensation if reasonable showing of lack of knowledge of disability is shown by claimant; and amending Section 92-601, R.C.M. 1947.	467
265		288	An act to repeal Section 32-2804, R.C.M. 1947, which allows boards of county commissioners to contract with the federal government to construct roads without competitive bidding.	468
266		321	An act to amend Sections 84-202, 84-301 and 84-302, R.C.M. 1947, to exempt from taxation freeport merchandise.	468
267		344	An act to amend Sections 11-1925, 11-1926 and 11-1927, R.C.M. 1947, to provide for pension adjustment based upon compensation paid to confirmed firemen.	473
268		393	An act amending Section 66-803, R.C.M. 1947, to increase the period of time a temporary license to practice cosmetology is valid and increasing the license fee from two dollars ($2) to four dollars ($4).	476
269		397	An act amending Section 79-201, R.C.M. 1947; adding a new general fiscal duty for the state treasurer relative to deposit of securities; and providing an effective date.	479
270		417	An act authorizing the department of fish and game to establish checking stations and requiring hunters and fishermen to stop at such stations and report game in their possession.	480
271		426	An act to amend Section 31-129, R.C.M. 1947, permitting a traffic education student to obtain an instruction permit; and providing limitations.	480
272		504	An act to amend Section 4-510, R.C.M. 1947, to increase the fees for issuance of an alcoholic beverages identification card from fifty cents ($.50) to one dollar ($1); and providing an effective date.	481
273		540	An act to provide for the establishment and operation of a joint city-county library; and providing an effective date.	482
274		365	An act to amend Section 4-322, R.C.M. 1947, forbidding beer wholesalers from selling, giving, delivering or distributing beer to the public.	483
275		54	An act to be cited as the Montana unfair trade practices and consumer protection act of 1973; prohibiting unfair trade practices and providing investigation procedures and penalties for violations of the act.	483
276		246	An act to establish procedures for the disposition of contributions made to the fire department relief association funds by unmarried members.	489
277		427	An act to amend Section 71-1516, R.C.M. 1947, to include adopted children who have been defined as "hard-to-place" within eligibility requirements for medical assistance; and to provide financial assistance to the adoptive parents of "hard-to-place" children.	489
278	60		An act to amend Section 89-105, R.C.M. 1947, to require water user approval before capital improvements are made on water projects in cases where construction estimate is five percent (5%) or more above the original estimate, and providing an exception for emergencies.	491

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280	104		An act amending Section 75-5933, R.C.M. 1947, providing for the recommendation of the district superintendent, the county high school principal, or other principal, as the school district trustees may deem necessary before hiring or dismissing personnel.	493
281	106		An act to amend Section 75-7204, R.C.M. 1947, to pay each school district's obligation for employer contributions to the federal social security system from the school district's retirement fund.	495
282	131		An act providing for the nonexempted employments covered by the workmen's compensation act; and providing criminal penalties; and repealing Section 92-207, R.C.M. 1947.	497
283	147		An act amending Section 26-202.3, R.C.M. 1947, defining resident for purposes of the fish and game act; eliminating the requirement of being a United States citizen.	498
284	235		An act relating to the redemption of county, city, town and school district bond issues before maturity; and amending Sections 11-2304, 16-2011 and 75-7107, R.C.M. 1947.	498
285	290		An act to amend Section 82A-1602, R.C.M. 1947, to change the name of the board of chiropodists to the state board of podiatry examiners and to change the name of the board of medical doctors to the Montana state board of medical examiners.	500
286	309		An act to repeal the "oleomargarine law" and other references to oleomargarine; repealing Sections 3-24-125, 27-501 through 27-503, 27-505, and 27-507 through 27-523, R.C.M. 1947.	504
287	341		An act creating a new section providing when justices of the peace shall retain or remit fees.	504
288	349		An act to amend Section 66-603, R.C.M. 1947, relating to the podiatry examiners to correct an error and inconsistency in the section changing the words two (2) chiropodists to three (3) podiatrists to make the section consistent and to provide that chiropodist and podiatrist are of the same profession.	505
289	356		An act creating a new section to provide for fees of justices of the peace in criminal actions.	506
290	365		An act to amend Section 32-2610, R.C.M. 1947, to allow the department of highways to increase the expenditures made in any financial district to the extent of twenty-five percent (25%) more than the amount of money allocated to such district.	507
291	370		An act to amend Section 31-119, R.C.M. 1947, revising and adding to the definition of certain words as applied to the driver licensing act.	507
292	408		An act amending Sections 10-901, 10-902, and 10-903, R.C.M. 1947, changing the declaration of policy in regard to reporting of cases of child neglect or abuse by providing that the reports are made to the department of social and rehabilitation services, its local affiliate and the county attorney; expanding the persons required to report; changing the definition by including with physical abuse, sexual and psychological abuse.	508
293	437		An act amending Sections 69-6004, 69-6005 and 69-6006, R.C.M. 1947, to provide certain notice requirements prior to creation of refuse disposal districts.	509
294	445		An act to amend Sections 89-3503 through 89-3506 and 89-3508, R.C.M. 1947, providing for a change in the definition of a fifty (50) year flood frequency to a flood of one hundred (100) year frequency.	511
295	237		An act authorizing the department of revenue to investigate matters relating to public welfare payments; to institute civil	

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			and criminal actions for enforcement of the welfare laws and to require the cooperation of other agencies to effectuate the purposes of this act.	516
296	250		An act to amend Section 4-414, R.C.M. 1947, "hours for sale of liquor," by deleting any reference to biennial general or primary election.	517
297		13	An act to provide for the office of lieutenant governor implementing Article VI, Section 1(3) of the 1972 Montana Constitution; amending Sections 25-501 and 82-1703, R.C.M. 1947; and repealing Sections 82-1701, 82-1702 and 94-5418, R.C.M. 1947, which deal with the lieutenant governor as president of the senate.	517
298		18	An act to amend Sections 79-301, 79-306, and 79-601, R.C.M. 1947, for the codification and general revision of the laws relating to the deposit of state funds and the unified investment program for public funds as required by Article VIII, Section 13 of the 1972 Montana Constitution; and to repeal Sections 79-1201 through 79-1211, 79-1213, 79-1214, and 79-1216, and Sections 81-1001 through 81-1008, R.C.M. 1947; and amending Section 79-1215, R.C.M. 1947.	519
299		60	An act to render unenforceable all liens held by the state department of social and rehabilitation services permitted under Sections 71-241 through 71-250, R.C.M. 1947; and to repeal Sections 71-241, 71-243, 71-244, 71-245, 71-246, 71-248 and 71-249, R.C.M. 1947, relating to the lien of the state department of social and rehabilitation services upon all real property of an applicant for public assistance and the enforcement of the lien and amending Section 71-247, R.C.M. 1947.	527
300		61	An act to amend Section 33-124, R.C.M. 1947, relating to the value of land selected and claimed for homesteads.	528
301		84	An act to amend Section 66-411, R.C.M. 1947, to increase the fees for the issuance and renewal of certificate of registration to practice barbering; increase the annual license fee for barbershops; and provide an effective date.	529
302		85	An act to amend Section 66-408, R.C.M. 1947, to increase the rate of compensation of members of the board of barbers from twenty-five dollars ($25) to thirty dollars ($30) per day while engaged in duties of inspecting barber shops.	530
303		99	An act to amend Sections 40-4413 and 40-4414, R.C.M. 1947, to include nursing home administrators and long-term care facilities.	531
304		110	An act to provide that a plaintiff in an open pit mining eminent domain action must agree to purchase all property within three hundred (300) yards of the condemned tract; providing further that the cost of replacement shall be considered in determining value of buildings owned by the city, county, or state; amending Sections 50-813, 50-815 and 50-816, R.C.M. 1947.	532
305		126	An act amending Section 26-301, R.C.M. 1947, to forbid hunters to drive their vehicles off established roads or trails, except to remove a slain animal.	533
306		143	An act directing county commissioners to fix salaries of certain county officers annually according to statutory schedules; repealing Section 25-609, R.C.M. 1947.	536
307		167	An act to amend Section 75-7906, R.C.M. 1947, to delete the stated amount of administration funds for the traffic education program.	536
308		168	An act to amend Sections 45-801 and 45-802, R.C.M. 1947; to delete maximum amount of threshermen's liens upon grain or crops and to provide for arbitration of disputes over rates charged for liens.	537
309		196	An act permitting the board of county commissioners to hire administrative assistants and set their duties and salary; and amending Section 16-2409, R.C.M. 1947.	539
310		204	An act amending Section 66-803, R.C.M. 1947, to extend the length of study for the two thousand (2,000) hour cos-	

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			metology course from not more than twelve (12) months to not more than fourteen (14) months; and changing the fee charged for temporary license.	539
311		238	An act amending Section 93-9902, R.C.M. 1947, to declare that the extraction of coal by strip mining or open pit mining is not a public use; and setting forth the public policy therefor.	542
312		249	An act to amend Section 50-704, R.C.M. 1947, to permit assessment work performed at one (1) point within a group of contiguous claims to apply to all contiguous claims.	545
313		277	An act amending Section 80-2211, R.C.M. 1947, relating to the apprehension and return of children who have left a juvenile facility of the department of institutions without permission by defining the term "juvenile facility of the department."	546
314		296	An act amending Section 11-1832, R.C.M. 1947, to provide for an increase in the minimum wage.	547
315		329	An act amending Section 60-145, R.C.M. 1947, to increase the privilege and license tax on the production of oil and gas; and to require the payment of a fee for the drilling of stratigraphic test wells or core holes.	548
316		346	An act amending Section 91-4418, R.C.M. 1947, by requiring the clerk of the district court to pay estimated inheritance tax collections to the state department of revenue instead of to the county treasurer.	551
317		352	An act amending Section 91-4414, R.C.M. 1947, relating to exemptions for inheritance tax purposes, by limiting the inheritance tax exemption available to "adopted and mutually acknowledged children" to "minor adopted and mutually acknowledged children"; and by allowing widowers the same inheritance tax exemption as widows.	552
318		402	An act to permit newsmen to refuse to disclose news sources; amending Section 93-701-4, R.C.M. 1947.	554
319		404	An act amending Section 84-5606.9, R.C.M. 1947, to prohibit sale of unstamped cigarettes by a Montana dealer to a dealer who is not licensed by the state in which the dealer is doing business; and providing an effective date.	556
320		420	An act amending Section 84-1502, R.C.M. 1947, to specifically provide that the deductions for depreciation and obsolescence shall in all cases be determined according to the provisions of the internal revenue code in effect for the taxable year; and providing an effective date.	556
321		455	An act to amend Sections 79-410 and 79-415, R.C.M. 1947, to modify revolving fund appropriation restrictions.	559
322		543	An act authorizing the department of social and rehabilitation services to purchase vocational rehabilitation services for handicapped persons; authorizing the department to promulgate rules and regulations under this act; and providing for the expenditure of funds for this purpose.	561
323		548	An act for the codification and general revision of the laws relating to the public employees' retirement system and repealing Sections 68-101, 68-102, 68-201, 68-202, 68-203, 68-301, 68-302, 68-303, 68-401 through 68-405, 68-501, 68-601, 68-602, 68-603, 68-701 through 68-710, 68-801, 68-802, 68-901, 68-902, 68-1001 through 68-1005, 68-1101, 68-1201 and 68-1301 through 68-1320, R.C.M. 1947.	564
324		549	An act providing for notification of nontenure teachers regarding their election or termination for the following year.	591
325	94		An act creating "The Montana Strip Mining and Reclamation Act" and providing for the control of prospecting for and the strip mining of coal, clay, phosphate rock, and uranium; providing for permits, reclamation plan requirements, methods of operation, and penalties; providing for the termination of reclamation contracts entered into under Chapter 245, Laws of Montana, 1967; repealing Sections 50-1018 through 50-1033, R.C.M. 1947; and providing an effective date.	592

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326	443		An act to provide for reclamation and conservation of land subject to open cut bentonite, sand or gravel mining; requiring reclamation contracts for operations resulting in removal of ten thousand (10,000) cubic yards of overburden or product; providing enforcement by the state board of land commissioners; repealing Sections 50-1018 through 50-1033, R.C.M. 1947; and providing an effective date.	610
327		127	An act to vest in the department and board of natural resources and conservation the authority to require and review long-range planning by certain utilities, to give approval to energy generation and conversion plant sites and associated facilities, to require preconstruction certification of such facilities; providing penalties for violation of this act; and providing an effective date.	618
328		142	An act to amend Section 75-5903, R.C.M. 1947, to restore the provisions for additional trustees for a third class high school district as they existed prior to the 1971 codification and general revision of Title 75.	634
329		144	An act relating to the work week of deputy sheriffs of first class and second class counties.	635
330	62		An act amending Section 66-411, R.C.M. 1947, by providing for licenses for advanced barber training programs, clinics, or seminars.	635
331	132		An act providing an increase in age from twenty-one (21) to twenty-two (22) years for an unmarried child to be a full-time student in an accredited school in the "beneficiary" definition in the workmen's compensation act, Title 92, R.C.M. 1947; and amending Section 92-413, R.C.M. 1947.	637
332	133		An act providing for inclusion of certain employees of the division of workmen's compensation within the joint merit system.	638
333	159		An act to provide for time and one-half pay for overtime for police officers.	638
334	190		An act amending Section 40-2726, R.C.M., 1947, by providing fees for filing policy forms and related papers with the insurance commissioner.	638
335	194		An act to repeal Section 69-5219.1, R.C.M. 1947, pertaining to registration of registered medical facilities.	641
336	195		An act to add a new section to Title 16, Chapter 43, R.C.M. 1947, relating to public hospital districts; providing for a definition of the term "hospital facilities" as used in the chapter.	641
337	276		An act to amend Sections 16-4201, 16-4203, 16-4204, 16-4205, 16-4206, 16-4207, 16-4209 and 16-4211, R.C.M. 1947, defining persons qualified to petition for and providing percentage necessary for creating, stopping procedure, or dissolving a mosquito abatement district; and providing an effective date.	641
338	362		An act to amend Section 84-1840, R.C.M. 1947, providing for the allocation of funds to counties and incorporated cities and towns for construction, reconstruction, repairs and maintenance of roads, streets and alleys.	646
339	380		An act amending Section 8-111, R.C.M. 1947, providing that the submission of a class C motor carrier application must be accompanied by the names and addresses of any person, firm, corporation or other legal entity with whom the applicant has executed a contract for the distribution, delivery or collection of wares, merchandise or commodities, or the transportation of person; that contracts must be in writing, executed by the parties, and submitted to this commission for examination; that the contracting parties must appear and offer testimony in support of the applicant; and providing an effective date.	648
340	389		An act to amend Section 23-3003, R.C.M. 1947, providing for a minimum number of deputy registrars; that the number of appointed deputy registrars for each county shall always be equally divided between the two (2) major political parties; that registration cards executed before the registration deadline shall be accepted three (3) days after the deadline; and providing for instruction of deputy registrars.	650

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341	435		An act amending Section 40-3011, R.C.M. 1947, relating to standard valuation law in life insurance; amending Section 40-3831, R.C.M. 1947, relating to standard nonforfeiture law in life insurance; providing for adoption of annuity mortality tables and permissible interest rates in valuation of annuity and insurance contracts; and providing for an effective date.	651
342	442		An act relating to the conduct of business of cooperative associations; amending Sections 14-203 and 14-216, R.C.M. 1947; repealing Sections 14-217, 14-218 and 14-220, R.C.M. 1947; and providing an effective date.	664
343		5	An act to provide a method to determine permanent disability of executive officers to implement Article VI, Section 6(2) of the 1972 Montana Constitution.	667
344		21	An act to create the board of public education and the board of regents of higher education, and to establish the state board of education as provided for by Article X, Section 9 of the 1972 Montana Constitution; to assign powers and duties to the boards; to amend Sections 79-2002 and 82-401, R.C.M. 1947; and to repeal Sections 75-5601 through 75-5606 and 75-5608, R.C.M. 1947.	668
345		125	An act to authorize elementary district trustees to establish as part of the elementary school a program for five-year-olds; to provide that the program be funded through the foundation program; to provide a funding base for the first year of the program; amending Sections 75-6902, 75-6903, 75-6917, and 75-7507, R.C.M. 1947; and providing an effective date.	675
346		197	An act to amend Section 75-6917, R.C.M. 1947, to make provision for the return of overpayments of state equalization aid made to the school districts.	679
347		199	An act to permit consolidation of police departments and sheriffs' offices within a county and providing for salaries of the employees of the consolidated offices thereof.	680
348		270	An act to amend Section 95-2007, R.C.M. 1947, by expanding the sentencing power of justice and police courts.	681
349		275	An act to add the definition of district to Section 11-3803 and to amend Section 11-3810 (2), R.C.M. 1947, to require membership of district board members on each county planning board, and providing residency requirements for a city-county planning board.	682
350		301	An act providing that foster or boarding homes or community residential facilities serving eight (8) or fewer specified handicapped persons be considered as a residential use of property; be permitted to use all residential zones; and to permit cities and counties to require a conditional use permit to maintain such homes in residential zones.	684
351		313	An act amending Section 82-1209, R.C.M. 1947, to require the state fire marshal to investigate the exact cause and circumstances of fires damaging or destroying property; to require insurance companies to notify the fire marshal of the cause and circumstances of certain fires; and requiring officials responsible for fire investigations to file loss incident reports on each fire.	685
352		349	An act to repeal Section 69-1910, R.C.M. 1947, pertaining to licensing of explosive magazines; to repeal Section 69-1911, R.C.M. 1947, pertaining to inspection of explosive factories and magazines; and to repeal Section 69-1930, R.C.M. 1947, pertaining to storage of kerosene, petroleum or caps in unincorporated towns and regulations for disposal of materials after dark.	685
353		403	An act creating a training coordinator of county attorneys within the department of justice; providing that the training coordinator be appointed by the attorney general; providing for the functions of the training coordinator; and providing an immediate effective date.	686
354		422	An act amending Section 11-2702, R.C.M. 1947, to allow a city or town governing body to extend the application of its zoning or subdivision regulations beyond its corporate	

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			limits where there is a city-county planning board if other prerequisites are met.	687
355		428	An act requiring counties to levy the same basic tax for foundation program support and to deposit surplus funds in the state equalization aid account; providing an increased level of state participation in the deficiency and permissive levies funding the maximum-budget-without-a-vote of elementary and secondary school districts; providing a limitation on school district budget increases; and amending Sections 75-6912, 75-6913, 75-6916, 75-6921, 75-6922, and 75-6923, R.C.M. 1947.	688
356		468	An act to regulate the manufacture, distribution and use of commercial feed in the state of Montana by requiring registration with fee of products and facilities; setting inspection fees and establishing the method of collection; providing an effective date; and repealing Sections 3-2012 through 3-2024, R.C.M. 1947.	695
357		502	An act requiring Montana colleges and universities to develop procedures to protect a student's right to privacy concerning his place of residence and his college or university records.	706
358		571	An act amending Sections 82A-101 through 82A-112 and 82A-115 through 82A-122, R.C.M. 1947, relating to the general provisions contained in the first chapter of the executive reorganization act of 1971; and repealing Sections 82A-113, 82A-114 and 82A-123, R.C.M. 1947.	707
359		25	An act to allow the qualified electors of any city or town in the state to adopt a strong mayor form of municipal government: creating a new section to be numbered 11-802.1; and partially implementing Article XI, Section 3 of the Montana Constitution of 1972.	719
360		69	An act to amend Section 59-1001, R.C.M. 1947.	720
361		96	An act providing for exemption from property taxation for all perishable fruits and vegetables in farm storage; amending Sections 84-202 and 84-301, R.C.M. 1947.	721
362		171	An act amending Section 75-7013, R.C.M. 1947, to provide school trustees an alternative method to let school bus transportation contracts, and provide an effective date.	726
363		279	An act to amend Sections 41-2303, 41-2306 and 41-2307, R.C.M. 1947, to provide that employees' minimum wage shall be exclusive of gratuities; to provide for further protection to employees; and to define the application of the fair labor standards act; and providing an effective date.	727
364		286	An act to amend Section 26-104, R.C.M. 1947; deleting statutory requirements as to locations for drawings for special elk permits; and providing that drawings are to be conducted as prescribed by the fish and game commission.	729
365		309	An act to allow school districts to stop payment of issued warrants one (1) year after the date of issue.	735
366		310	An act deleting the requirement that school districts have signed claims for an expenditure when adequate documentation is provided by the payee; and amending Section 75-6806, R.C.M. 1947.	735
367		314	An act amending Section 84-6903, R.C.M. 1947, to provide for an alternative tax based on gross sales as required under Article III of the multistate tax compact (Title 84, Chapter 67, R.C.M. 1947).	737
368		335	An act amending Sections 89-310, 89-312, 89-314 and 89-318, R.C.M. 1947; adding new provisions broadening the scope of weather modification by authorizing more extensive research and development of weather modification.	738
369		358	An act to amend Section 87-106, R.C.M. 1947, changing the amount of disqualifying retirement income; and providing amendments to conform with reorganization as required in Title 82A, Chapter 10, R.C.M. 1947.	740
370		375	An act to repeal Sections 84-1001 through 84-1010. R.C.M. 1947, relating to a tax on production of carbon black.	744

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371		392	An act directing the state board of land commissioners to reconvey to the city of Butte certain land in the city of Butte; and providing an effective date.	744
372		407	An act amending Section 84-1504, R.C.M. 1947, relating to the computation of license tax, by adopting the federal income tax taxable year used by corporations as the taxable period for Montana corporation license tax return purposes; by providing for one (1) signature on returns instead of two (2); by providing definitions of "doing business" and "engaging in business"; by providing language to clarify the terms "gross income" and "net income"; and providing an effective date.	745
373		423	An act providing for nonprofit organizations to establish community homes for the developmentally disabled, and providing authority to the department of institutions to make rules and regulations for the operation of the homes.	747
374		440	An act relating to the board of electricians; amending Section 66-2804, R.C.M. 1947, increasing the number of members of said board, increasing their terms of office and changing the manner of their selection.	748
375		444	An act to amend Section 41-701, R.C.M. 1947, by including services in public labor for which Montana residents are to be preferred.	749
376		471	An act implementing Article II, Section 28, Article IV, Sections 2 and 4, and Article XII, Section 3 (2) of the 1972 Montana Constitution and H.B. 28 of this session providing the term "of unsound mind" to include other like terms in the Revised Codes of Montana, 1947.	751
377		488	An act to provide for job protection for railroad employees affected by closure of railroad stations and facilities.	751
378	41		An act establishing bluebunch wheatgrass as the official grass for the state of Montana.	752
379	44		An act amending Section 3-512, R.C.M. 1947, to provide that the state grain laboratory at Great Falls be the only one authorized to test public warehouse grain and that the fee charged for testing on appeal be commensurate with the cost.	752
380	103		An act providing for a comprehensive state insurance plan and tort claims procedure to be known as the "Montana comprehensive state insurance plan and tort claims act."	753
381	134		An act providing for lowering the noise intensity level from one hundred (100) to ninety (90) decibels in the occupational deafness section of the workmen's compensation act; amending Section 92-710, R.C.M. 1947; and providing an effective date.	758
382	245		An act amending Section 46-232, R.C.M. 1947, concerning the licensing of milk plants and dairies.	761
383	292		An act to amend Sections 69-5601, 69-5602, 69-5603, 69-5604, 69-5605, 69-5607, R.C.M. 1947, relating to definitions, administration of the act, rules and regulations, license fees, enforcement and related matters.	762
384	306		An act increasing the size of the board of natural resources and conservation from five (5) to seven (7) members; and amending Section 82A-1509, R.C.M. 1947.	764
385	336		An act amending Section 82-1149, R.C.M. 1947, relating to the establishment of prices for state newspaper publications; providing that such prices shall not exceed the minimum going rate charged any other advertiser for publication or advertisement set in the same sized type and published for the same number of insertions.	765
386	371		An act to amend Section 31-145, R.C.M. 1947, providing for a time limit on forwarding reports of conviction.	765
387	386		An act requiring slow-moving vehicles to yield to other vehicles following it; authorizing the establishment of turnout areas; defining a slow-moving vehicle; amending Section 32-2147, R.C.M. 1947; and providing an effective date.	766

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388	393		An act to amend Section 59-605, R.C.M. 1947, by providing that an appointment to fill a vacancy is for the unexpired term; providing for de jure officers before senate confirmation; and repealing Section 59-606, R.C.M. 1947.	767
389	403		An act to establish guidelines for the management and use of investments held by eleemosynary institutions and funds.	768
390	407		An act defining certifying agency and protected variety; providing for labeling of seeds; providing a penalty; providing for testing of seed samples; providing for additional prohibitions; amending Sections 3-802.1, 3-802.2, 3-804, 3-807, 3-808, 3-810 through 3-814 and 3-820, R.C.M. 1947; and repealing Section 3-806, R.C.M. 1947.	771
391		17	An act to amend Sections 4-354, 7-122, 15-2285, 15-22-112, 16-910, 16-2010, 16-3706, 16-3912, 16-3916, 25-605, 25-609, 32-2607, 32-3804, 50-1032, 50-1220, 51-303, 53-703, 53-1013, 53-1025, 59-1109, 59-1110, 66-223, 66-227, 67-2211, 67-2212, 67-2213, 67-2214, 67-2215, 67-2216, 67-2217, 67-2218, 67-2219, 67-2220, 67-2221, 67-2222, 67-2223, 67-2224, 67-2225, 67-2226, 67-2317, 67-2318, 67-2340, 67-2342, 69-3502, 69-3504, 69-3504.1, 69-3923, 69-6007, 71-236, 75-6410.1, 75-6711, 81-928, 81-930, 81-1115, 81-1116, 81-1117, 81-1118, 82-1501, 82-1506, 82-1512, 82-1925.1, 82A-1801, 82A-1803, 82A-1804, 82A-1808, 89-1812, 89-2401, 91-502, 91-504, 91-505, 91-506, 91-507, 91-508, 91-509, 91-523, 91-4321, 91-4414.1, 91-4415, 91-4418, 91-4419, 91-4421, 91-4423, 91-4425, 91-4426, 91-4427, 91-4428, 91-4429, 91-4430, 91-4431, 91-4437, 91-4438, 91-4439, 91-4440, 91-4442, 91-4443, 91-4444, 91-4445, 91-4446, 91-4447, 91-4448, 91-4449, 91-4450, 91-4451, 91-4454, 91-4455, 91-4459, 91-4460, 91-4461, 91-4462, 91-4463, 91-4464, 94-1506, and 94-35-260, R.C.M. 1947, to provide for a general revision of the tax laws of Montana to implement Article VIII, Sections 3 and 7 of the 1972 Montana Constitution by designating the state department of revenue as the tax administration agency for the state of Montana, by replacing the state board of equalization with a state tax appeal board, or liquor control board, by designating county assessors as agents of the state department of revenue, and by providing for county tax appeal boards; and to repeal Sections 16-1016, 16-3703, and 91-4466, R.C.M. 1947.	781
392		68	An act to authorize the creation of funds to establish and maintain licensed day care centers and homes and providing for a special levy.	846
393		107	An act amending Section 11-1821, R.C.M. 1947, to base policemen's retirement pay on one half the base salary, excluding overtime and payments in lieu of sick leave and annual leave they were receiving as active officers computed on the highest salary received in any one month during the last year of active service.	846
394		214	An act to amend Section 87-103, R.C.M. 1947, providing for an increase in the maximum weekly benefit amount; providing a new formula for determining the qualifying base period wage; and providing amendments to conform with reorganization as required in Title 82A, Chapter 10, R.C.M. 1947.	848
395		241	An act transferring the state board of hail insurance from the state auditor to the department of agriculture for administrative purposes only; and repealing Section 82A-2103, R.C.M. 1947.	849
396		303	An act to amend Section 75-6001, R.C.M. 1947, relating to teacher certification; providing an exemption for student teachers performing practice teaching in the public schools; and defining the legal status of student teachers during such assignment.	850
397		363	An act amending Section 75-8702, R.C.M. 1947, providing that residency status of students may be determined by authority of the regents.	851
398		469	An act to regulate the operation of motorcycles.	852
399	175		An act to amend Title 84, Chapter 18, R.C.M. 1947, by adding a new section designated 84-1840.1, R.C.M. 1947, allocating funds to be used by the department of highways for the participation with railroads for erection of railroad grade crossing protection on roads and streets except those	

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			on the interstate, primary or urban systems; providing for reimbursement of the fund at the beginning of each fiscal year; providing that the department of highways shall select the crossings to be protected and that participation be on the same basis as applicable on federal aid roads; authorizing counties and cities to use funds allocated to them from gasoline tax money for participation in grade crossing protection; repealing all acts and parts of acts in conflict herewith, provided, however, that Sections 72-164 to 72-168, R.C.M. 1947, inclusive are not repealed; and providing that this act shall be effective on passage and approval.	852
400	261		An act amending Section 75-6905, R.C.M. 1947, to raise the maximum budget schedules for elementary and high schools.	854
401	338		An act to amend Sections 11-3702, 11-3705, 11-3709, 11-3710, 11-3711, 11-3712, 11-3718, 11-3720 and 11-3723, R.C.M. 1947, relating to the acquisition, construction, establishment, maintenance, financing, and leasing of off-street parking and related facilities by cities and parking commissions thereof; authorizing revenue bonds issued for such facilities to be secured by the pledge of on-street and off-street parking revenues, special assessments, reserves to be maintained by transfer from other city funds and the levy of taxes limited to the amount of deficiencies in the reserve; mortgages of facilities paid for from the proceeds of the bonds; and providing an effective date.	858
402	366		An act to permit the department of highways to apportion state construction funds during the interim between legislative sessions.	864
403	397		An act amending Section 66-1025, R.C.M. 1947, providing for reciprocity for doctors of osteopathy; and providing an effective date.	864
404	427		An act to amend Section 87-148, R.C.M. 1947, to provide unemployment compensation coverage for all state employees.	866
405		16	An act to provide for a general revision of the tax laws of Montana to implement Article VIII, Sections 3 and 7 of the 1972 Montana Constitution by designating the state department of revenue as the tax administration agency for the state of Montana, by creating a state tax appeal board, by designating county assessors as agents of the state department of revenue, and by providing for county tax appeal boards; and to repeal Sections 84-211, 84-429.10, 84-443, 84-444, 84-445, 84-446, 84-447, 84-453, 84-502, 84-503, 84-4732, 84-4733, 84-4734, and 84-4735.	874
406		23	An act to revise petition and election requirements for changing county boundaries and county seats in accordance with the provisions of Article XI, Section 2 of the 1972 Montana Constitution; amending Chapters 3, 4 and 5 of Title 16, R.C.M. 1947.	938
407		50	An act to amend Section 10-501, R.C.M. 1947, to change the definition of a dependent or neglected child to include children up to and including the age of seventeen (17) years.	951
408		78	An act amending Section 26-202.1 and Section 26-202.6, R.C.M. 1947, relating to fees for resident and nonresident fishing licenses; providing an effective date.	952
409		108	An act to amend the statutes relating to the creation and operation of drainage districts in the state of Montana, and their adaptation to flood control projects, as contained in Sections 89-2201 through 89-2825, R.C.M. 1947, so as to provide that when benefits of such projects are received by improvements to land, or facilities or structures placed on or in land, the benefits so received may be subject to assessment for district costs of the project; amending Section 89-2330 to include improvements, facilities and structures as subject to assessment and clarifying the inclusion of public utilities in the payment of assessments; amending Sections 89-2332, 89-2333, 89-2334, 89-2337, 89-2338, 89-2405, and 89-2410, R.C.M. 1947, so as to include improvements; and providing an effective date.	957
410		112	An act providing for the licensing and regulation of motor vehicle wrecking facilities; controlling junk vehicles in nonwrecking yard locations; the establishment of motor vehicle	

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			graveyard facilities, and related matters thereto; amending Sections 32-4515 and 32-4516, R.C.M. 1947, to permit the licensing of junkyards by the department of health and environmental sciences; and the establishment of an effective date.	962
411		118	An act providing for collection of service charges by cities and towns operating a municipal sewer system; giving of notice to owners of real estate of delinquency in payment of service charges; and certification to the county assessor of real estate upon which service charges remain unpaid; and adding a new Section 84-4726.1, R.C.M. 1947.	968
412		128	An act to amend the dangerous drug act, by adopting substantially the definitions, procedures, standards and schedules and the regulatory provisions of the uniform controlled substances act as recommended by the national conference of commissioners on uniform state laws; by excluding from such schedules non-narcotic drugs which may be lawfully sold over the counter without a prescription; by repealing Sections 54-129, 54-130, 54-131, and 66-1504.1, R.C.M. 1947; amending Sections 54-132 and 54-133, R.C.M. 1947, by deleting references to Section 54-131, R.C.M. 1947; amending Section 54-132 by deleting the provision regarding deferred imposition of sentence; providing for severability if any part of this act is determined unconstitutional; and repealing all acts and parts of acts in conflict herewith.	969
413		135	An act authorizing cities and towns to hold elections on the issuance of general obligation bond issue without there first having been filed a petition calling such election; authorizing the issuance of revenue bonds without an election; amending Sections 11-2301, 11-2306 and 11-2404, R.C.M. 1947; and repealing Section 11-2307, R.C.M. 1947.	986
414		146	An act requiring each camper to be registered and to display identifying number and decal; charging each camper owner a one dollar ($1) fee for registration of each camper; amending Section 84-406, R.C.M. 1947; and providing an effective date and penalty.	990
415		256	An act establishing the salaries of boards of county commissioners in certain classes of counties by resolution; increasing the daily salary in certain classes of counties; deleting the maximum annual salary in certain classes of counties; setting the mileage allowance at twelve cents ($.12) per mile; providing for a salary increase during a term of office; and amending Section 16-912, R.C.M. 1947.	992
416		260	An act to amend Sections 75-7004, 75-7005 and 75-7019, R.C.M. 1947, to allow the trustees of a school district and the county transportation committee a degree of latitude in granting increases in individual transportation based on an isolation chart provided by the superintendent of public instruction; and to change the board of education to the board of public education.	993
417		283	An act to amend Section 75-7403, R.C.M. 1947, to provide that the number of hours in a school day may be reduced if the total number of hours in the school week are not less than thirty (30); and providing for approval of reduction by the board of education.	998
418		304	An act to amend Sections 16-1230, 16-1231 and 16-1232, R.C.M. 1947, to permit counties to contract with printing establishments for county printing.	998
419		338	An act amending Sections 75-7102 and 75-8122, R.C.M. 1947, providing that community college districts shall have bonding authority and shall have authority to borrow moneys.	1000
420		394	An act to create a state banking board within the department of business regulation and to prescribe its powers, duties and responsibilities.	1001
421		396	An act to amend Section 16-2050, R.C.M. 1947, to permit investment of county, school district and county high school moneys under the state unified investment program; and providing an effective date.	1004
422		406	An act to amend Section 53-106.1, R.C.M. 1947, to provide	

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			that any motor vehicle manufactured after 1934 and more than thirty (30) years old may be registered as a vintage vehicle.	1006
423		441	An act relating to the electrical safety act; amending Section 66-2812, R.C.M. 1947, relating to exemptions of coverage of the act pertaining to electrical utility companies, individuals doing electrical work on their own premises and cities' signal and communications equipment.	1007
424		442	An act to provide procedures for fire drills in schools; and repealing Sections 75-8308 and 75-8309, R.C.M. 1947.	1008
425		456	An act relating to the electrical safety law; and amending Section 66-2802, R.C.M. 1947, relating to the purpose of the act to establish the national electrical code as a minimum approved safety standard to provide procedures for establishing standards more stringent than the national electrical code.	1009
426		480	An act to provide for a three (3) day cooling-off period on door-to-door sales contracts.	1010
427		534	An act authorizing cities, counties and airport authorities to impose reasonable passenger service charges for the use of certain public airports to be collected either by passenger air carriers, if they agree to collect the charge on a contract basis, or to be collected by airport personnel; providing for reporting, collection, disposition and use thereof; providing penalties; and providing an effective date.	1012
428		573	An act for the codification and general revision of the laws relating to the department of state lands, and providing that this act is effective upon its passage and approval.	1015
429	385		An act amending Section 72-118, R.C.M. 1947, providing that upon the filing by any railroad of a change or revision of any rate, fare, charge or classification by filing tariff sheet or sheets, every railroad upon suspension by the commission of the tariff sheet or sheets must submit prepared testimony and exhibits to support such changes or revisions; providing that the complaint of any interested party may be filed with the board within twenty (20) days after the date of filing of such changes or revisions; providing further that the board may suspend the operation of such rate, fare, charge or classification for a period not to exceed one hundred eighty (180) days and within sixty (60) days the board must investigate such; and providing for an effective date.	1062
430	406		An act to be codified in Chapter 15, Title 66, R.C.M. 1947, relating to the sale and advertisement of contraceptive drugs and devices; providing penalties; and repealing Sections 94-3616, 94-3617, 94-3618 and 94-3619, R.C.M. 1947.	1064
431	451		An act reducing the membership of the legislative council to eight (8) members and providing terms; providing for council organization, powers and duties; providing for appointive of subcommittees; providing for powers and duties of select and standing committees when the legislature is not in session; providing compensation for council members and committees; providing for a priorities committee to determine interim studies; and amending Sections 43-709 through 43-715, R.C.M. 1947.	1066
432		509	An act amending Sections 84-1302 and 84-1303, R.C.M. 1947, to change the basis for determining and raising the strip coal mines license tax and removing the reclamation credit; providing distribution for a portion of the strip coal mines license tax to the counties; and providing for a severability clause.	1072
433	18		An act implementing Article V, Section 6 of the 1972 Montana Constitution by creating procedures which enable the legislature to call itself into special session; and providing for an immediate effective date.	1074
434	345		An act to amend Section 66-3102, R.C.M. 1947, changing the composition of the board of nursing home administrators; and providing an effective date.	1076
435	360		An act to amend Section 16-2818, R.C.M. 1947, by providing the amount which various counties can be reimbursed by the	

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			highway patrol bureau, department of justice, for prisoner board bill; and defining the word "day" for the purpose of this act.	1076
436	363		An act to repeal Section 32-4304, R.C.M. 1947, and amend Section 32-4305, R.C.M. 1947, to eliminate the requirement of petitions or consent from local authorities before access can be controlled or limited in certain areas.	1077
437	369		An act to amend Section 53-431, R.C.M. 1947, providing a six (6) year limitation of driver license and registration suspensions resulting from unsatisfied judgments.	1078
438	373		An act to provide for combining all state employees into one or more groups for purposes of negotiating and contracting for group insurance.	1079
439	381		An act to amend Sections 66-101, 66-103, 66-107, 66-108, 66-109 and 66-112, R.C.M. 1947, to provide for staggered terms for members of the board of architects; to provide definitions; to raise examination fees; to provide for compensation of board members; and to provide grounds for disciplinary action; and providing an effective date.	1080
440	411		An act to provide that the department of administration shall develop a wage and salary plan for state employees for submission to the 1975 legislature and be granted immediate authority to develop a personnel classification plan; providing that salary increases, changes in position classifications and changes in number of employees must be approved by the department of administration; and creating a board for the hearing of grievances that result from the implementation of this act.	1085
441	446		An act granting public employers and public employees the right to bargain collectively; providing that the board of personnel appeals may designate labor organizations to be exclusive representative of employees in certain units; and may also call elections by employees for the same purpose; providing the board of personnel appeals shall establish remedies for unfair labor practices; and providing procedures for carrying out the act.	1089
442	86		An act providing for regulation of the various phases of the marketing and distribution of agricultural seeds intended for propagation purpose and restricting the methods of disposition of screening that contain viable prohibited noxious weed seed; and repealing Section 3-301 through 3-309, R.C.M. 1947.	1099
443	115		An act providing certain amendments and repeals to the workmen's compensation act concerning the extent of coverage; amending Sections 92-209, 92-901, 92-902, 92-1102, and 92-1121, R.C.M. 1947; and repealing Sections 92-301 through 92-306 and 92-402 through 92-407, R.C.M. 1947.	1103
444	121		An act providing for a definition of "wages" in the workmen's compensation act; and repealing Section 92-423, R.C.M. 1947.	1105
445	128		An act providing for a definition of "average weekly wage" in the workmen's compensation act; and repealing Section 92-422, R.C.M. 1947.	1105
446	139		An act amending Section 32-2805, R.C.M. 1947, increasing payment to county surveyors and members of county boards of commissioners to thirty-three dollars ($33) per day for inspecting roads and construction work.	1105
447	187		An act to amend Sections 27-216, 27-221, 27-225 and 27-227, R.C.M. 1947, by including seed with those items to which pesticides are applied; to make the act applicable to public utility applicators; to set dealer's or retailer's license fee at five dollars ($5) when applied for by an applicator; to require separate dealer's license for each outlet from which pesticides are obtained; to provide that licensed veterinarians and pharmacists need not be required to purchase license to sell pesticides; to set license fee of five dollars ($5) for retailers selling only human insect repellent; and providing an effective date.	1106
448	196		An act to revise Chapter 52 of Title 69 by broadening the	

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			provisions of and redefining the terms used under the section of chapter entitled "definitions"; providing a new section in the chapter with respect to unlawful use of term in connection with name, signs and advertisements of facilities; revising the provisions for making rules; and amending Sections 69-5201 and 69-5213, R.C.M. 1947.	1114
449	212		An act amending Section 84-2207, R.C.M. 1947, to allow sixty (60) days for filing crude oil production and license tax statements and for payment of the tax; to provide that the statement and tax be sent to the department of revenue rather than the state treasurer; to provide that overpayment of the tax be applied as a credit or refund; and providing an effective date.	1117
450	303		An act amending Section 84-4914, R.C.M. 1947, to establish new gross income standards for determining liability to file returns; and to provide requirements for filing returns by nonresidents; and providing effective dates.	1118
451	308		An act to provide for the establishment of requirements on milk for manufacturing purposes and its production and processing, known as the "Manufactured Dairy Products Act"; repealing Section 3-24-112, R.C.M. 1947.	1120
452	444		An act providing a system for the appropriation and use of surface and groundwater; providing a procedure for the determination and confirmation of existing water rights; establishing a system of centralized records of all water rights; repealing Sections 89-121 through 89-123, 89-801 through 89-804, 89-807 through 89-816, 89-829 through 89-842, 89-844 and 89-845, 89-847 through 89-855, 89-857 through 89-864, 89-2912, 89-2913, 89-2919 through 89-2925, and 89-2935, R.C.M. 1947; amending Sections 89-1001, 89-2911, 89-2915, 89-2917, and 89-2918, R.C.M. 1947.	1121
453	5		An act implementing Article II, Section 29 of the 1972 Montana Constitution, by providing for an award including necessary expenses of litigation when the private property owner prevails; repealing Section 93-9921, R.C.M. 1947.	1143
454	12		An act to revise initiative and referendum administrative requirements to comply with the provisions of Article III, Sections 4 and 5 of the Montana Constitution of 1972; amending Sections 37-101 through 37-105 and 37-107 through 37-109, R.C.M. 1947, and repealing Section 23-2701.1, R.C.M. 1947.	1144
455	180		An act to amend the mileage allowance of certain county officials; amending Section 16-2723, R.C.M. 1947, to set a mileage allowance of twelve cents ($.12) per mile for sheriffs; and amending Section 93-313, R.C.M. 1947, to set a mileage allowance of twelve cents ($.12) per mile for traveling expenses of district judges.	1150
456	182		An act amending Section 82-1010, R.C.M. 1947, requiring publication of only comments or conclusions in cities or towns of one thousand (1,000) or less residents instead of the entire examiner's report.	1151
457	220		An act relating to membership of the Montana horse racing commission; the terms of office thereon; providing a quorum for transaction of business; amending Sections 62-501 and 62-503, R.C.M. 1947.	1152
458		26	An act to amend Sections 16-2501, 16-2502, 16-2503, 16-2505 and 16-2507, R.C.M. 1947, deleting reference to the 1889 Constitution and providing for consolidation of offices among counties; implementing Article XI, Section 3 of the 1972 Montana Constitution.	1153
459		65	An act to amend Section 89-115, R.C.M. 1947, to grant specific authority to the board of natural resources and conservation to provide for the disposal of water projects; and to include a waiver of liability from suit on behalf of the state.	1156
460		153	An act to amend Section 11-1932, R.C.M. 1947, increasing minimum wages of firemen.	1158
461		205	An act to provide for the conservation, management, enhancement and protection of nongame fish and wildlife and	

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			species threatened with extinction; and to provide enforcement authority and penalties for violations.	1158
462		265	An act to amend Section 32-1123, R.C.M. 1947, increasing the allowable width of vehicles and the moving distance of farm vehicles; and altering the flagmen escort requirements of farm vehicles.	1164
463		320	An act prohibiting the public display of offensive sexual material, with definition of terms; and providing for a penalty.	1169
464		343	An act requiring American Indian studies to be part of the educational background of public school teaching personnel employed on, or in public schools located in the vicinity of, Indian reservations where the enrollment of Indian children qualifies the school for federal funds for Indian education programs, and encouraging American Indian studies as part of the educational background of all school personnel employed in the state.	1170
465		367	An act prohibiting the use of chain distributor schemes; and providing a penalty.	1171
466		372	An act providing procedures within the department of labor and industry that will enable women to reach their fullest potential of service and contribution to society.	1172
467		373	An act excluding agricultural associations formed under the cooperative marketing act from the provisions of Section 94-1104, R.C.M. 1947.	1173
468		513	An act to amend Section 84-1501, R.C.M. 1947, by reinstating a provision pertaining to an alternative method of complying with Montana's corporation license tax which was inadvertently deleted by Section 1, Chapter 7, second extraordinary session of the laws of the Forty-second Legislative Assembly.	1173
469		519	An act to establish a central reporting system within the department of revenue to assist in the identification of corporations transacting business within the state of Montana and/or subject to taxation by the state of Montana; requiring the secretary of state and the department of labor and industry to provide lists relating to corporations; providing for the administration of the act; providing for the lists as a public record; and providing an effective date.	1176
470	28		An act providing for the filling of vacancies in the office of district court judge and supreme court justice to comply with Article VII, Section 8 of the 1972 Montana Constitution; repealing Sections 93-209, 93-220, 93-309, R.C.M. 1947.	1177
471	129		An act providing compensation for injuries producing total temporary disability under the workmen's compensation act; repealing Section 92-701, R.C.M. 1947.	1179
472	376		An act to revise provisions for waiver of nonresident fees in state reciprocal agreements; and amending Section 75-8601, R.C.M. 1947.	1180
473	377		An act amending Section 8-116, R.C.M. 1947, providing that every motor carrier shall, at the time of issuance of a certificate, and annually thereafter on or between the first day of January and the fifteenth day of January of each calendar year, pay to the commission the sum of five dollars ($5) for every motor vehicle operated by the carrier over or upon the public highways of this state; and providing an effective date.	1181
474	383		An act amending Section 25-605, R.C.M. 1947, increasing the salaries of certain county officers.	1182
475	396		An act amending the Montana apiculture act, Title 82, Chapter 8, R.C.M. 1947; amending Sections 82-805, 82-806, 82-807, 82-808, 82-809, 82-811 and 82-814, R.C.M. 1947.	1184
476	431		An act to amend Sections 59-1001, 59-1003, 59-1005 and 59-1008, R.C.M. 1947; to provide laws for administering annual vacation and sick leave benefits for all employees of state, county and city governments; and to add a new section to provide for jury leave for public employees.	1190

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477	447		An act requiring the insurer to accept or deny a claim within thirty (30) days of its filing; payment of weekly compensation until claimant returns to work; termination of compensation only upon notice and division approval; and payment of costs.	1194
478	454		An act to provide for the support of the government of Montana for the years 1973 and 1974, providing a severability clause and an effective date.	1194
479	455		An act to provide for the support of the government of Montana for years 1973 and 1974.	1195
480		46	An act providing for increased penalties for littering and suspension of camping permit for conviction of littering; and amending Sections 94-3339 and 26-812, R.C.M. 1947.	1196
481		140	An act providing for permits for disinterments of dead bodies and for administration by the department of health and environmental sciences.	1197
482		149	An act requiring counties to purchase liability insurance for sheriffs and sheriffs' departments.	1197
483		169	An act to amend Sections 66-3101, 66-3102, 66-3103, 66-3104, 66-3105, 66-3109, 66-3110 and 66-3112, R.C.M. 1947, providing for nursing homes and administrators; defining long-term care facilities to include skilled nursing facilities and intermediate care facilities -A, and defining the term inactive nursing home administrator; changing the composition of and clarifying who may be appointed to the board; providing for qualification and registration of licensees; providing for inactive nursing home administrators to pay an annual fee or not more than twenty-five dollars ($25); requiring nursing home administrators and inactive nursing home administrators to complete a continuing education course prior to renewal of registration or license; providing for a penalty of up to five hundred dollars ($500) fine or imprisonment up to six (6) months or both; and repealing Section 66-3113, R.C.M. 1947.	1198
484		254	An act repealing Section 84-1501.8, R.C.M. 1947, to eliminate the six and one-quarter percent (6¼%) corporation license tax rate for taxable years ending after February 28, 1973; and amending Section 84-1501, R.C.M. 1947, to make retroactive and permanent the six and three-quarters percent (6¾%) corporation license tax rate.	1203
485		272	An act amending Section 34-301, R.C.M. 1947, relating to regulation of certain establishments; amending Section 34-302, R.C.M. 1947, relating to definitions; amending Section 34-303, R.C.M. 1947, relating to licenses required; amending Section 34-304, R.C.M. 1947, relating to the fee charged for a license; amending Section 34-306, R.C.M. 1947, relating to rules and regulations and cooperative agreements; providing for related matters; and repealing Section 34-308, R.C.M. 1947.	1205
486		334	An act to amend Section 16-807, R.C.M. 1947, to clarify the limit of indebtedness a county can incur as being five percent (5%) of the assessed value of the taxable property in the county; and to provide that any single purpose indebtedness exceeding forty thousand dollars ($40,000) be submitted to the voters.	1208
487		368	An act permitting submission of fingerprints in connection with retail liquor and beer licenses.	1208
488		458	An act relating to the workmen's compensation act; amending Section 92-418, R.C.M. 1947, relating to the definition of "injury" or "injured" to provide for broadened coverage for firemen; and providing for an effective date.	1209
489		532	An act to amend Section 84-301, R.C.M. 1947, relating to taxation and classification of rights of entry.	1209
490		578	An act appropriating three hundred thousand dollars ($300,000) from the general fund and appropriating all federal and private funds received for the purposes of this act from the federal and private revenue fund to the commission created by this act for the biennium ending June 30, 1975, for conducting a comprehensive study of and planning	

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			for post-secondary education in Montana; and establishing a commission on post-secondary education.	1213
491	23		An act providing for the minimum number of justices of the peace, their compensation, qualifications, terms of office, training and designation as county officers; providing for the collection of fees by justices and improvement of their facilities; abolishing fees in criminal actions; and deleting references to townships; all to comply with Article VII, Sections 5 and 7 of the 1972 Montana Constitution; amending Sections 11-727, 16-2403, 16-2404, 16-2406, 25-307, 93-401 through 93-403, 93-405, 93-704, 93-1602, 93-6601, 93-6602, 93-6706, 93-6903, 93-7302, 93-7311, 93-7402, 93-7605, 93-7607, 93-7704, 93-7709, 93-9705, R.C.M. 1947; and repealing Sections 25-303, 25-305 and 25-306, R.C.M. 1947.	1215
492	124		An act providing for exempted employments from coverage under the workmen's compensation act; and repealing Section 92-202, R.C.M. 1947.	1225
493	127		An act providing for election of employers and employees to come under the workmen's compensation act; providing for actions against third party causing injury; providing for a right to subrogation; and repealing Section 92-204, R.C.M. 1947.	1226
494	254		An act to provide that the fee of two dollars ($2) for issuance of decals for snowmobiles shall be deposited with the state treasurer to the credit of the state fish and game commission; amending Section 53-1025, R.C.M. 1947.	1228
495	339		An act to amend Sections 59-801, 59-802, 59-538 and 59-539, R.C.M. 1947, to increase mileage and per diem allowances for public employees and officers.	1229
496	467		An act amending Section 82-1918, R.C.M. 1947; providing for contracts for the lease-purchase of buildings to be made for longer than three years; and authorizing the state purchasing agent subject to the approval of the legislature as part of the long-range building program to enter into contracts for the lease-purchase of buildings.	1231
497		97	An act to create the resource indemnity trust account in the trust and legacy fund and to provide for the funding of the account by imposing a tax on the gross value of product of all nonrenewable resource extracting industries.	1232
498		357	An act amending Section 87-106, R.C.M. 1947, to exempt from disqualification an individual who leaves his employment because of illness; and providing amendments to conform with reorganization as required in Title 82A, Chapter 10, R.C.M. 1947.	1236
499	183		An act to amend Section 16-2618, R.C.M. 1947, to require county commissioners and city and town councils to seek out best terms for deposits of money and deleting requirement for ratable distribution.	1239
500	208		An act requiring local governing bodies to adopt subdivision regulations and in default thereof providing for the promulgation of departmental minimum requirements; providing for the submission of environmental assessments; providing for the administrative establishment of procedures and requirements for preparation of subdivision plats; setting forth requirements for surveying and platting divisions of real property and for recording surveys and plats; providing for surveying, platting, and subdividing generally; and repealing Sections 11-601 through 11-616, 11-3843 through 11-3848 and 11-3851, R.C.M. 1947.	1243
501	214		An act providing for the issuance of bonds by airport authorities; amending Sections 1-804, 1-912 and 1-916, R.C.M. 1947.	1254
502	300		An act providing for the identification, acquisition, restoration, enhancement, preservation and administration of historic, paleontological, archaeological, and cultural sites and objects, and providing for their use and enjoyment by the people; providing for a permit system for excavation of sites; providing penalties for violation of this act; providing that if other laws conflict with this act that this act shall control; and providing an effective date.	1258

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503	470		An act to amend Section 16-1015, R.C.M. 1947, to increase the maximum allowable county general fund mill levy.	1262
504		131	An act providing for an increase in silicosis benefits' payments as administered by the division of workmen's compensation; amending Sections 71-1003, 71-1004 and 71-1008, R.C.M. 1947.	1262
505		211	An act amending Section 10-622, R.C.M. 1947, providing an increase in the maximum salary for juvenile probation officers from ten thousand two hundred dollars ($10,200) to eleven thousand dollars ($11,000).	1264
506		217	An act to grant additional powers to the department of health and environmental sciences relating to acquisition of information and enforcement of remedies for the purpose of complying with the 1972 amendments to the federal water pollution control act; and amending Sections 69-4802, 69-4808.2, 69-4809.1 and 69-4823, R.C.M. 1947.	1265
507		220	An act to amend Section 75-6204, R.C.M. 1947, to increase pay to members of the teachers' retirement board and remove restrictions on maximum per diem pay; amending Sections 75-6206 and 75-6207, R.C.M. 1947, to change certain methods of funding and disbursing from the various teachers' retirement system funds; amending Section 75-6208, R.C.M. 1947, to provide additions and changes in various benefits to members of the teachers' retirement system; amending Section 75-6212, R.C.M. 1947, to allow for service credits for employment while a teacher is on leave; amending Section 75-6213, R.C.M. 1947, to define basis of cost for out-of-state service credit; changing credit for out-of-state teaching and prior military service and decreasing membership requirements of the teachers' retirement system; adding a new section to be numbered 75-6219 providing for a tax deferred annuity program sponsored by the teachers' retirement system.	1272
508		305	An act establishing a program of protective services for the mentally disabled.	1286
509		465	An act to amend Sections 69-5001, 69-5002, 69-5003 and 69-5005, R.C.M. 1947, by broadening the statement of public policy to include solid waste disposal and to refer to quality of water for all uses; revising the definition of subdivision; adding other definitions; revising the provisions for making rules and standards; requiring approval of subdivision plats and plans and specifications by the department of health before filing with county clerk and recorder; providing for enforcement proceedings and hearings on alleged violations; providing remedies and sanctions relating to violations; providing for use of records and cooperation of other agencies; and providing for effect of invalidity of part of act.	1291
510		522	An act relating to the financing of the long-range building program, by the issuance of bonds payable from special taxes appropriated therefor and further supported by the pledge of the full faith and credit of the state; amending Sections 79-2201 through 79-2205, R.C.M. 1947.	1295
511	40		An act for the codification and general revision of the laws relating to the department of fish and game.	1301
512	72		An act to provide that agricultural land shall be classified, appraised, and assessed according to its value for agricultural purposes without regard to the value it may have for other purposes; and defining agricultural lands, establishing procedure and providing a penalty; amending Sections 84-401 and 84-429.12, R.C.M. 1947.	1330
513	109		An act creating a Montana criminal code, to codify and generally revise the statutes concerning criminal offenses; and providing an effective date.	1335
514	178		An act to amend Sections 69-3502, 69-3503, 69-3504, 69-3504.1, 69-3505, 69-3506, 69-3508, 69-3508.1, 69-3508.2, 69-3510, 69-3512, 69-3514, 69-3517, and 69-3518, R.C.M. 1947, all relating to the operation, occupancy, licensing and certification of motor boats and other vessels; providing for disposition of funds from licensing and fines arising from motor boat operation; providing for protection of navigational markers; prescribing penalties for violation; and providing an effective date.	1423

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Chap.	Senate Bill	House Bill	Title	Page
515	469		An act amending Section 11-203, R.C.M. 1947, revising the procedures for the organization of cities and towns; and providing an effective date.	1435
516		15	An act to amend Sections 84-308, 84-401, 84-404, 84-405, 84-428, 84-429.12, 84-606, 84-713, 84-715, 84-719 through 84-723, 84-725 through 84-730, 84-732 through 84-734, 84-801, 84-804, 84-901, 84-904, 84-905, 84-907, 84-1004 through 84-1006, 84-1008, 84-1103, 84-1105, 84-1106, 84-1108, 84-1202, 84-1204 through 84-1207, 84-1209, 84-1302, 84-1304 through 84-1306, 84-1308, 84-1403, 84-1405, 84-1406, 84-1408, 84-1412, 84-1501.2, 84-1502 through 84-1504, 84-1505.1, 84-1505.2, 84-1507, 84-1508, 84-1508.2, 84-1509, 84-1512, 84-1514 through 84-1518, 84-1601, 84-1603 through 84-1606, 84-1608, 84-1702, 84-1703, 84-1705, 84-1707, 84-1831 through 84-1832.1, 84-1834, 84-1835, 84-1837, 84-1838, 84-1841 through 84-1844, 84-1847, 84-1849 through 84-1855, 84-1857, 84-1858, 84-1861, 84-2003, 84-2005, 84-2006, 84-2008, 84-2011 through 84-2013, 84-2016, 84-2104 through 84-2106, 84-2108, 84-2203 through 84-2207, 84-2209, 84-2301 through 84-2309, 84-2401 through 84-2404, 84-2412, 84-2502, 84-2503, 84-2505, 84-2507, 84-2508, 84-2602, 84-2603, 84-2605, 84-2607, 84-2608, 84-3503, 84-3513, 84-3515, 84-3516, 84-3803, 84-3806, 84-4003, 84-4116, 84-4502, 84-4818, 84-4820, 84-4821, 84-4823, 84-4826, 84-4901, 84-4903.1, 84-4903.2, 84-4903.5 through 84-4903.13, 84-4907, 84-4907.1, 84-4913, 84-4914, 84-4919, 84-4920, 84-4924, 84-4928, 84-4928.1, 84-4929 through 84-4931, 84-4937 through 84-4940, 84-4942, 84-4943, 84-4946, 84-4948, 84-4950, 84-4951, 84-4955, 84-4956, 84-4958, 84-5210, 84-5402, 84-5406 through 84-5410, 84-5412, 84-5415, 84-5501, 84-5502, 84-5606.2 through 84-5606.4, 84-5606.6, 84-5606.8, 84-5606.13 through 84-5606.17, 84-5606.20 through 84-5606.22, 84-5606.25, 84-5606.27 through 84-5606.31, 84-5902 through 84-5907, 84-6203 through 84-6209, 84-6211, 84-6212, 84-6301, 84-6306, 84-6307, 84-6402 through 84-6408, 84-6410, 84-6606, 84-6607, 84-6801, 84-6806, 84-6807, 84-6902, 84-6907, R.C.M. 1947, to delete all reference to the state board of equalization as the tax administering agency for the state and to replace references to the board with the words "state department of revenue".	1436

APPROPRIATIONS

Senate Bill	House Bill	Title	Page
1		An act appropriating money for the operation of the Forty-third Legislative Assembly; and providing an effective date.	1605
7		An act to appropriate moneys to various state agencies for the biennium ending June 30, 1975; and providing for other matters relating to the appropriations.	1606
51		An act to appropriate moneys to various state agencies for the biennium ending June 30, 1975; and providing for other matters relating to the appropriations.	1613
54		An act to appropriate money for capital projects for the biennium ending June 30, 1975 and providing for other matters relating to the appropriations.	1622
167		An act appropriating eight thousand six hundred twenty-one dollars and forty-two cents ($8,621.42) to the treasurer of Treasure county to rectify an inadvertent overpayment from the county to the state, and providing an effective date.	1634
197		An act to appropriate moneys for support of the public schools for the biennium ending June 30, 1975; and providing for other matters relating to the appropriations.	1635
457		An act to appropriate moneys to the legislative council for its operation, for the statutory retrieval system annual update and for legislative use of the statutory retrieval system for the biennium ending June 30, 1975.	1636
468		An act to appropriate from the general fund to the department of health and environmental sciences, all moneys received under House Bill No. 112, of the first session of the Forty-third Legislative Assembly of the state of Montana.	1637

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Senate Bill	House Bill	Title	Page
472		An act appropriating money for the operation of the Forty-third Legislative Assembly and providing an effective date.	1637
	37	An act appropriating thirty-two thousand three hundred twenty dollars ($32,320) to the legislative council from the general fund for state of Montana dues to the council of state governments for the 1973-1975 biennium.	1571
	49	An act appropriating ninety thousand dollars ($90,000) to the legislative council in reimbursement for extraordinary expenses incurred in implementing the provisions of the Montana Constitution of 1972; and for operation to June 30, 1973; and providing an effective date.	1571
	55	An act to appropriate moneys to various state agencies for the biennium ending June 30, 1975; and providing for other matters relating to the appropriations.	1572
	56	An act to appropriate moneys to various state agencies for the biennium ending June 30, 1975; and providing for other matters relating to the appropriations.	1581
	57	An act to appropriate moneys to various state agencies for the biennium ending June 30, 1975; and providing for other matters relating to the appropriations.	1591
	574	An act to appropriate moneys for payment of employer's contribution to the public employees' retirement system for the services of members of the legislative assembly; and providing an effective date.	1602
	575	An act appropriating moneys for certain state agencies of government for the biennium ending June 30, 1973; and providing an effective date.	1603
	578	An act appropriating three hundred thousand dollars ($300,000) from the general fund and appropriating all federal and private funds received for the purposes of this act from the federal and private revenue fund to the commission created by this act for the biennium ending June 30, 1975, for conducting a comprehensive study of and planning for post-secondary education in Montana; and establishing a commission on post-secondary education.	1213
	581	An act appropriating sixty-seven thousand nine hundred sixty-two dollars ($67,962) from the agricultural experiment station earmarked revenue fund for the biennium ending June 30, 1975, for the acquisition of real property; appropriating as much as may be necessary from the agricultural experiment station earmarked revenue fund for interest and other costs to the purchaser for the acquisition of real property; authorizing the agricultural experiment station to enter into a contract for deed to approximately 93.69 acres of land in Gallatin county; and providing an effective date.	1605

This listing is for cross reference, the following appropriation is also listed under chapter number since it contains some permanent law.

Chap.	Senate Bill	House Bill	Title	Page
490		578	An act appropriating three hundred thousand dollars ($300,000) from the general fund and appropriating all federal and private funds received for the purposes of this act from the federal and private revenue fund to the commission created by this act for the biennium ending June 30, 1975, for conducting a comprehensive study of and planning for post-secondary education in Montana; and establishing a commission on post-secondary education.	1213

HOUSE JOINT RESOLUTIONS

No.	Title	Page
House Joint Resolution No. 1	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the federal government to reimburse all states for old-age assistance, aid to dependent children and needy blind, aid to the permanently disabled and medical assistance payments for Indians who reside on reservations or on allotted or trust lands.	1637
House Joint Resolution No. 2	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting that all credits granted by units	

	of the Montana university system be fully and equally transferable among the several units.	1638
House Joint Resolution No. 3	A Joint Resolution of the Senate and the House of Representatives of the state of Montana directing the bills and journal committees of the Senate and House of Representatives to meet as a joint committee for the purpose of devising a new format for the journals of the Senate and House of Representatives.	1639
House Joint Resolution No. 5	A Joint Resolution of the Senate and the House of Representatives of the state of Montana directing the legislative council to study the operations of the water resources division of the department of natural resources and conservation.	1640
House Joint Resolution No. 9	A Joint Resolution of the Senate and the House of Representatives of the state of Montana directing the environmental quality council to undertake a Montana land use policy and legislation study and requesting the governor to appoint an inter-departmental advisory committee.	1641
House Joint Resolution No. 10	A Joint Resolution of the Senate and the House of Representatives of the state of Montana designating Miss Montana as an honorary hostess of the state of Montana.	1642
House Joint Resolution No. 11	A Joint Resolution of the Senate and the House of Representatives of the state of Montana declaring the rights of mentally retarded persons as to opportunities for normalization.	
House Joint Resolution No. 12	A Joint Resolution of the Senate and the House of Representatives of the state of Montana respectfully requesting that the U. S. congress take action to restore funds for the rural environmental assistance program and the water bank program.	1642
House Joint Resolution No. 14	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting that the legislative council conduct a study of the laws relating to elections for cities and towns and to report its findings and recommendations together with any necessary legislation to the second session of the 43rd Legislative Assembly.	1644
House Joint Resolution No. 16	A Joint Resolution of the Senate and the House of Representatives of the state of Montana urging the United States army corps of engineers to give maximum consideration to the maintenance of high-quality recreational opportunities in the development and execution of its operating plan for Lake Koocanusa and that the corps of engineers specify exact fluctuation limits and criteria in the operating plan.	1645
House Joint Resolution No. 18	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the legislative council to conduct a study to determine an acceptable minimum level of services to be provided by county and city-county health departments, the feasibility of creating district public health departments, and an economical means for providing public health services to the people of Montana.	1646
House Joint Resolution No. 21	A Joint Resolution of the Senate and the House of Representatives of the state of Montana urging that all military cemeteries be administered by the veterans' administration and that the Custer Battlefield National Cemetery be granted more land.	1647
House Joint Resolution No. 22	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the legislative council to study the funding and operation of the various pension and retirement systems for public employees.	1647
House Joint Resolution No. 27	A Joint Resolution of the Senate and the House of Representatives of the state of Montana directing the president of the United States to reinstate the rural electrification act two percent (2%) interest direct loan program.	1648
House Joint Resolution No. 31	A Joint Resolution of the Senate and the House of Representatives of the state of Montana directing the department of fish and game to review water resource projects to determine outdoor recreational potential prior to sale or disposition of the projects by the department of natural resources and conservation.	1649
House Joint Resolution No. 32	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the legislative council to study the office of state treasurer.	1651
House Joint Resolution No. 34	A Joint Resolution of the Senate and the House of Representatives of the state of Montana directing the legislative council to study the results of the Oregon bottle act, the Washington litter act, other state acts, and non-governmental entities on litter control, solid waste disposal, recycling, and energy conservation.	1651

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No.	Title	Page
House Joint Resolution No. 37	A Joint Resolution of the Senate and the House of Representatives of the state of Montana urging Indian public health services to provide medical assistance to off-reservation Indians.	1652

SENATE JOINT RESOLUTIONS

No.	Title	Page
Senate Joint Resolution No. 1	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the legislative council to conduct a study of the problems involved in the 1972 Montana Constitution in Article II, Section 8, "right of participation", and Section 9, "right to know", concerning the various fundamental citizens' rights involved, and report its findings to the second session of the Forty-third Legislative Assembly together with draft legislation.	1653
Senate Joint Resolution No. 2	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting that the legislative council conduct a study of the problems involved in Article II, Section 18, "state subject to suit" of the 1972 Montana Constitution concerning the abolition of the doctrine of governmental immunity, and report its findings to the regular session of the Forty-third Legislative Assembly together with draft legislation of a procedure to process claims.	1654
Senate Joint Resolution No. 3	A Joint Resolution of the Senate and the House of Representatives of the state of Montana directing the legislative council to conduct a study on qualifications, training, compensation and number of justices of the peace.	1655
Senate Joint Resolution No. 4	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the legislative council to conduct a study of the problems involved in Article II, Section 15, "rights of persons not adults" of the 1972 Montana Constitution concerning the rights of persons under eighteen (18) years of age, and report its findings to the second session of the Forty-third Legislative Assembly together with draft legislation.	1656
Senate Joint Resolution No. 5	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the United States department of agriculture to treat Montana's winter allowance as an income disregard rather than an addition to income.	1657
Senate Joint Resolution No. 8	A Joint Resolution of the Senate and the House of Representatives of the state of Montana to improve administration of farm programs urging the Montana agricultural stabilization and conservation state committee to adopt immediately the emergency measures now known by the agricultural research service, soil conservation service, federal extension service, experiment stations and other agencies to reduce Montana's conserving base, to minimize summer fallowing, to maximize cropping flexibility, and to prevent further destruction of Montana's cropland and further pollution of Montana's water by saline-alkali seep, in accordance with the principles of conservation of natural resources in soil and water as set out in the soil conservation and domestic allotment act, as amended.	1658
Senate Joint Resolution No. 9	A Joint Resolution of the Senate and the House of Representatives of the state of Montana to improve administration of farm programs urging the Montana agricultural stabilization and conservation state committee to effect close coordination with cooperative extension service, soil conservation service, agricultural experiment stations and Montana state university at state and county levels and to effect immediate, sharp, downward adjustments in Montana's conserving base acres to provide a reliable feed supply at stable cost for Montana's livestock and feeding industries to improve the statewide economy and to correct wastage of Montana's natural resources in soil and water by erosion and saline seep.	1660
Senate Joint Resolution No. 12	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the legislative council to maintain a continuing study committee to oversee the efforts of the six units of the university system in avoiding unnecessary duplication.	1663

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No.	Title	Page
Senate Joint Resolution No. 13	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the legislative council to study the problems surrounding use of privately owned lands for hunting and fishing in order that a comprehensive system of "pay hunting" may be developed.	1664
Senate Joint Resolution No. 14	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting and urging that the congress of the United States take effective action to restore to the state of Montana the full amount of the funds which have been legally apportioned to the state but which have been improperly reduced and curtailed by the executive branch of the federal government through the device of "contract controls" and "limitations of obligation."	1665
Senate Joint Resolution No. 15	A Joint Resolution of the Senate and the House of Representatives of the state of Montana directing the legislative council to evaluate the need for state coordination of the planning, marketing, and servicing of bond issues in the state of Montana.	1666
Senate Joint Resolution No. 16	A Joint Resolution of the Senate and the House of Representatives of the state of Montana to the Honorable Mike Mansfield and the Honorable Lee Metcalf, senators from the state of Montana, the Honorable Richard Shoup and the Honorable John Melcher, representatives from the state of Montana, and to the congress of the United States asking that federal block grant assistance to upgrade law enforcement and criminal justice in Montana be continued.	1667
Senate Joint Resolution No. 17	A Joint Resolution of the Senate and the House of Representatives of the state of Montana encouraging the public schools to include in their curricula courses on Indian history, culture and contemporary affairs, and teacher training institutions to provide programs specifically designed to prepare teachers to teach Indian children.	1668
Senate Joint Resolution No. 18	A Joint Resolution of the Senate and the House of Representatives of the state of Montana directing that select committees of the Senate and House of Representatives study all legislative proposals concerning gambling and wagering and directing members of the Forty-third Legislature to introduce all legislative bills concerning gambling or wagering prior to the sixtieth legislative day of the 1973 session of the Forty-third Legislative.	1669
Senate Joint Resolution No. 19	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the legislative council to evaluate and report upon the manner in which audits of political subdivisions of the state are accomplished.	1670
Senate Joint Resolution No. 20	A Joint Resolution of the Senate and the House of Representatives of the state of Montana urging President Richard M. Nixon to review the plight of Montana and to release desperately needed funds which have been appropriated for Montana programs.	1671
Senate Joint Resolution No. 21	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the legislative council to conduct a study of the construction laws of the state of Montana and direct that said laws be recodified into a modern and adequate construction code.	1672
Senate Joint Resolution No. 22	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting that the legislative council conduct a study of a statewide, uniform license fee system of taxation of automobiles, in lieu of the new car sales tax and personal property taxes with an anniversary system of licensing and registration of vehicles throughout the year, and if they find such legislation feasible, to draft legislation for the implementation of such a system.	1673
Senate Joint Resolution No. 23	A Joint Resolution of the Senate and the House of Representatives of the state of Montana urging Secretary Earl Butz, presidential counselor for natural resources, to work toward provision of adequate funds for productive management of federal lands.	1674
Senate Joint Resolution No. 24	A Joint Resolution of the Senate and the House of Representatives of the state of Montana directing the environmental quality council to undertake a study, make recommendations and propose legislation concerning the development and implementation of a state energy policy as it relates to a developing national energy policy and requesting the governor to direct the coal task force to work with and advise the environmental quality council.	1675
Senate Joint Resolution No. 25	A Joint Resolution of the Senate and the House of Representatives of the state of Montana respectfully requesting the president and the congress of these United States to make available additional moneys and manpower for predator control research.	1676

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No.	Title	Page
Senate Joint Resolution No. 26	A Joint Resolution of the Senate and the House of Representatives of the state of Montana respectfully requesting the congress and the president of these United States to establish a national rabies wildlife research program to provide protection to the citizens of Montana and other states.	1678
Senate Joint Resolution No. 27	A Joint Resolution of the Senate and the House of Representatives of the state of Montana providing for a special committee to inquire into the requirements necessary to insure a high quality of legislative employees.	1679
Senate Joint Resolution No. 28	A Joint Resolution of the Senate and the House of Representatives of the state of Montana urging motorists to drive with their headlights on low beam in the daytime to deter head-on collisions; and providing an effective date.	1680
Senate Joint Resolution No. 30	A Joint Resolution of the Senate and the House of Representatives of the state of Montana expressing gratitude to Montana landowners who share the public fish and wildlife resources and reaffirming support of proper fish and wildlife management.	1681
Senate Joint Resolution No. 31	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the legislative council to study administration and finance of Montana libraries.	1682
Senate Joint Resolution No. 33	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the governor of the state of Montana immediately to marshal all resources of the state and to seek emergency aid from the federal government to halt further destruction of Montana's natural resources in soil, water and wildlife and further damage to Montana's ecology and economy by saline seep caused by agricultural practices and geologic conditions.	1683
Senate Joint Resolution No. 34	A Joint Resolution of the Senate and the House of Representatives of the state of Montana providing for the legislative council to conduct an interim study on health maintenance organizations for Montana.	1685
Senate Joint Resolution No. 35	A Joint Resolution of the Senate and the House of Representatives of the state of Montana encouraging the department of natural resources and conservation to investigate the feasibility of the state constructing water resource projects to supply water, if needed, for coal development in eastern Montana.	1686
Senate Joint Resolution No. 36	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requiring the legislative administration committees of the House and the Senate meeting jointly to employ a business manager.	1687
Senate Joint Resolution No. 37	A Joint Resolution of the Senate and the House of Representatives of the state of Montana expressing the support of the Montana Legislative Assembly for legislation proposed in congress which calls for the establishment of mining, mineral, and environmental research centers in each state.	1688
Senate Joint Resolution No. 38	A Joint Resolution of the Senate and the House of Representatives of the state of Montana to the Honorable Mike Mansfield and the Honorable Lee Metcalf, senators from Montana, and the Honorable John Melcher and the Honorable Richard Shoup, representatives from Montana, requesting the Montana congressional delegation to urge the appropriate agencies of the United States government to fulfill their responsibility to reconstruct the access roads to missile sites in the nine (9) county missile complex area to bring said roads into compliance with essential minimum standards of safety.	1689
Senate Joint Resolution No. 39	A Joint Resolution of the Senate and the House of Representatives of the state of Montana affirming the governor's appointment of a coal task force and requesting that the coal task force continue to investigate and report on the impact of coal development and coordinate coal-related research proposals.	1690
Senate Joint Resolution No. 40	A Joint Resolution of the Senate and the House of Representatives of the state of Montana requesting the director of the department of business regulation to create an unfair practices advisory council to advise the department regarding enforcement of the unfair practices act.	1691

REFERENDUM, PROPOSED CONSTITUTIONAL AMENDMENT AND ADOPTION OF PROPOSED NEW MONTANA CONSTITUTION

Referendum No. 68—Rejected by the people at the November 2, 1971 Special General Election.

New Montana Constitution—Record of votes cast at the election for the adoption or rejection of the proposed constitution.

Proposed constitutional amendment—Rejected by the people at the November 7, 1972 General Election.

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SESSION LAWS

CHAPTER NO. 1

An Act Relating to the Organization and Procedures of the Forty-third Legislative Assembly; Prescribing the Duties and Compensation of Legislative Employees; and Specifying an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. For positions where a salary range is shown in this act, the salary shall be fixed jointly by the house and senate committees on legislative administration. Persons employed who do not have previous experience shall be paid the minimum salary set by this act. Persons who have been previously employed by the legislative assembly shall be paid the minimum amount plus eighteen cents ($0.18) per hour for each *of the last two* previous *sessions* worked.

Section 2. (1) *The following named are hereby classified as officers of the legislature and as such shall be entitled to receive the following compensation for each legislative day; secretary of the senate and chief clerk of the house, thirty-five dollars ($35) per day; sergeant-at-arms of each house, thirty-five dollars ($35); chaplain of each house, eleven dollars ($11) per day. This shall constitute the total compensation to be received by each of the above named officers for all duties performed by such officer.* Their duties are as prescribed by law, by legislative rule, and by the presiding officer of their respective houses.

(2) The bills coordinators of each house shall receive three dollars sixty cents ($3.60) to three dollars ninety cents ($3.90) per hour each. They shall perform duties assigned by the bills committee by which they are employed.

(3) Secretaries to *all* standing and special committees shall receive three dollars *sixty cents ($3.60)* to three dollars *ninety cents ($3.90)* per hour each. They shall perform duties assigned to them by the chairman of the committee by which they are employed.

(4) Secretaries to the secretary of the senate and chief clerk of the house shall receive three dollars sixty cents ($3.60) to three dollars ninety cents ($3.90) per hour each. They shall perform duties assigned by the person by whom they are employed.

(5) Secretaries to the president of the senate, speaker of the house, and to the majority and minority floor leaders and the secretary-payroll clerk to the sergeant-at-arms in each house shall

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receive three dollars sixty cents ($3.60) to three dollars ninety cents ($3.90) per hour each. They shall perform duties assigned by the person by whom they are employed.

(6) The assistant secretary of the senate, assistant chief clerk of the house, and assistant sergeant-at-arms shall receive three dollars *ninety* cents *($3.90)* to *four* dollars *twenty-six* cents *($4.26)* per hour each. They shall perform duties assigned to them by the persons to whom they are responsible.

(7) Secretaries to the assistant secretary of the senate and assistant chief clerk of the house shall receive three dollars five cents ($3.05) to three dollars forty cents ($3.40) per hour each. They shall perform duties assigned to them by the persons to whom they are responsible.

(8) The bill clerk, journal clerk, and chief stenographer of each house are immediately responsible to the secretary of the senate or chief clerk of the house. They shall receive three dollars sixty cents ($3.60) to three dollars ninety cents ($3.90) per hour each. They shall perform duties assigned to them by the persons to whom they are responsible.

(9) The assistant bill clerk, assistant journal clerk, and assistant chief stenographer of each house shall receive three dollars fifteen cents ($3.15) to three dollars fifty cents ($3.50) per hour each. They shall perform duties assigned to them by the persons to whom they are responsible.

(10) Reading clerks shall receive two dollars eighty cents ($2.80) to three dollars fifteen cents ($3.15) per hour each. They are immediately responsible to the secretary of the senate or chief clerk of the house and shall perform duties assigned by the persons to whom they are responsible.

(11) Stenographers shall receive two dollars eighty cents ($2.80) to three dollars fifteen cents ($3.15) per hour each. They shall perform duties assigned by the persons to whom they are responsible.

(12) Supply clerks shall receive two dollars eighty cents ($2.80) to three dollars fifteen cents ($3.15) per hour each. They shall perform duties assigned by the sergeant-at-arms of the house where they are employed.

(13) Proofreaders shall receive two dollars forty-five cents ($2.45) to three dollars ($3) per hour each. They shall perform duties assigned by the persons to whom they are responsible.

(14) Pages shall receive one dollar sixty cents ($1.60) per

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hour each. They shall perform duties assigned by the persons to whom they are responsible.

(15) Doorkeepers, watchmen, janitors, and parking attendants shall receive two dollars thirty-five cents ($2.35) to two dollars seventy cents ($2.70) per hour each. They shall perform duties assigned by the sergeant-at-arms in the house where employed.

(16) Legislative guides shall receive three dollars five cents ($3.05) to three dollars forty cents ($3.40) per hour each. They shall perform duties assigned by the sergeant-at-arms in the house where employed.

(17) Typists shall receive two dollars sixty-five cents ($2.65) to three dollars ($3) per hour each. They shall perform duties assigned to them by the persons to whom they are responsible.

(18) The journal typist of each house shall receive three dollars five cents ($3.05) to three dollars forty cents ($3.40) per hour each. They shall perform duties assigned by the secretary of the senate or chief clerk of the house.

(19) The supervisor of engrossing and enrolling shall receive three dollars seventy cents ($3.70) to four dollars ($4) per hour. The duties are as prescribed by the legislative services division of the legislative council and by legislative rule.

(20) The chief proofreader of engrossing and enrolling shall receive three dollars thirty-five cents ($3.35) to three dollars seventy cents ($3.70) per hour. He shall perform duties assigned by the supervisor of engrossing and enrolling.

(21) The chief mailing clerk and the chief mimeograph clerk shall receive three dollars fifty cents ($3.50) to three dollars eighty-five cents ($3.85) per hour each. They are immediately responsible to the director of the legislative services division of the Montana legislative council.

(22) Assistant chief mailing clerks and assistant chief mimeograph clerks shall receive three dollars ($3) to three dollars thirty-five cents ($3.35) per hour each. They shall perform duties assigned by the chief mailing clerk and chief mimeograph clerk.

(23) Mailing clerks and mimeograph clerks shall receive two dollars eighty cents ($2.80) to three dollars fifteen cents ($3.15) per hour each. They shall perform duties assigned by the chief mailing clerk and chief mimeograph clerk.

(24) Any other legislative employee shall receive a salary set by the committee on legislative administration in the house

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where employed but not more than four dollars ninety cents ($4.90) per hour.

Section 3. The salaries specified in this act shall be paid for every day of the legislative session during which the employee is employed. The presiding officer of each house may authorize, when necessary, the continued employment and compensation of employees for a period not to exceed fifteen (15) days after the adjournment of a session of the legislative assembly.

Section 4. The salaries specified in this act are effective only for employees of the forty-third legislative assembly.

Section 5. The positions and salaries specified in this act may be modified by joint action of the committees on legislative administration in each house if persons are employed jointly by the house and senate. Salaries for persons employed jointly shall be fixed by the committees on legislative administration meeting in joint sessions at amounts not to exceed four dollars forty cents ($4.40) per hour.

Section 6. This act is effective on its passage and approval.

Approved: January 6, 1973.

CHAPTER NO. 2

An Act Amending Section 11-3215, R.C.M. 1947, to Provide that Candidates for the Office of City Commissioner Must File State ments of Such Candidacy Thirty-five (35) Days Prior to the Primary Election and Specifying an Immediate Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-3215, R.C.M. 1947, is amended to read as follows:

"11-3215. **Nominations of candidates — primary election.** (1) Candidates to be voted for at all general municipal elections at which commissioners are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those nominated in the manner hereinafter prescribed. The primary election for such nominations shall be held on the last Tuesday of August of the odd-numbered years.

(2) Any qualified elector of the municipality, who is the owner of real estate situated therein to the value of not less than one thousand dollars, desiring to become a candidate for commissioner,

shall, at least *thirty-five (35)* days prior to said primary election, file with the clerk of the commission a statement of such candidacy in substantially the following form:

State of Montana:

County of .....

I, ... , being first duly sworn, say that I reside at ..... street ..... (city or town) of....., county of ....., state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of commissioner to be voted upon at the primary election to be held on the last Tuesday of August, 19....., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) .....

Subscribed and sworn to (or affirmed) before me by ..... on this..... day of....., 19.....

(Signed) ..... And

shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

(3) Petition Accompanying Nominating Statement.

The undersigned duly qualified electors of the (city, town) of ....., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination to the office of commissioner at the primary election to be held on the last Tuesday of August, 19..... We further state that we know him to be a qualified elector of said (city, town), and a man of good moral character, and qualified in our judgment, for the duties of such office, and we individually certify that we have not signed similar petitions greater in number than the number of commissioners to be chosen at the next general municipal election.

Names of Qualifying Electors Number Street

(Space for Signatures.)

State of Montana,

County of .....

....., being duly sworn, deposes and says, that he knows the qualification and residence of each of the persons sign-

ing the appended petition, and that such signatures are genuine, and the signatures of the persons whose names they purport to be.

(Signed) .....

Subscribed and sworn to before me this ..... day of ....., 19.....

.....(Notary Public)

This petition, if found insufficient, shall be returned to..... at No. ..... street, ..., Montana.

(4) Immediately upon the expiration of the time of filing the statements and petition for candidates, the clerk of the commission shall cause to be published for three consecutive days in all the daily newspapers published in the municipality in proper form, the names of the persons that are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspaper that may be published in said municipality, and the said clerk shall thereupon cause the primary ballots to be printed and authenticated with a facsimile of his signature.

(5) In the event the number of legally qualified candidates for the office of commissioner at such primary election does not exceed twice the number of vacancies in the commission to be filled, no municipal primary election for the nomination of candidates for the office of commissioner shall be held in said city for said year and such legally qualified candidates shall be deemed duly nominated and shall be placed on the general ballot."

Section 2. This act is effective on its passage and approval.

Approved: January 11, 1973.

CHAPTER NO. 3

An Act Complying With Article II, Section 20 of the 1972 Montana Constitution, by Changing the Size of a Grand Jury and the Number Required to Find an Indictment; Amending Sections 95-1401, 95-1402, 95-1410, 93-1801, and 93-1802, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 95-1401, R.C.M. 1947, is amended to read as follows:

"95-1401. **Summoning grand juries.** A grand jury must only be drawn and summoned when the district judge in his discretion

considers a grand jury necessary and shall so order. The grand jury must consist of *eleven (11)* persons, of whom *eight (8)* must concur to find an indictment. The district judge may direct the selection of one (1) or more alternate jurors who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. If a member of the jury becomes unable to perform his duty he may be replaced by an alternate. The composition and drawing of a grand jury shall be in accordance with the provisions of sections 93-1801 to 93-1804."

Section 2. Section 95-1402, R.C.M. 1947, is amended to read as follows:

"95-1402. **Objections to grand jury and to grand jurors.** (a) The state may challenge the panel of a grand jury on the grounds that the grand jury was not selected, drawn or summoned according to law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges may be oral or in writing and shall be tried and decided by the court. At any time for cause shown the court may excuse or discharge a juror or jurors either temporarily or permanently and in the latter event the court may impanel another person or persons in place of the juror or jurors discharged.

(b) Motion to Dismiss. A motion to dismiss the indictment may be based on the grounds that the grand jury was not selected, drawn or summoned according to law, or that an individual juror was not legally qualified. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to section 95-1403 of this code that *eight (8)* or more jurors after deducting those not legally qualified, concurred in finding the indictment."

Section 3. Section 95-1410, R.C.M. 1947, is amended to read as follows:

"95-1410. **Finding and presentment of the indictment.** (a) An indictment cannot be found without the concurrence of at least *eight (8)* grand jurors. When so found it must be *endorsed,* "a true bill," and the endorsement must be signed by the foreman of the grand jury.

(b) Indictment. How Presented and Filed:

(1) An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk.

(2) When an indictment is filed against a district court

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judge, it must be transmitted directly to the supreme court, who shall thereupon designate and direct a judge of the district court of another district to preside at the trial of such indictment and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment.

(c) If the defendant is in custody or has given bail and *eight (8)* jurors do not concur in finding an indictment, the foreman shall so report to the court in writing forthwith.

(d) When an indictment is found against a defendant, a warrant must issue for his arrest and he must be brought before the court, unless the court orders otherwise."

Section 4. Section 93-1801, R.C.M. 1947, is amended to read as follows:

"93-1801. **Grand jury—when and how to be impaneled.** Whenever in the opinion of the district judge a grand jury is necessary, he must make an order directing a grand jury to be drawn and summoned to attend before the court. The order must specify the number of such jurors to be drawn, which must not be less than *fifteen (15)* nor more than *twenty (20)*. The names of such jurors must be drawn from jury box No. 1, mentioned in section 93-1404, and the list of names certified and summoned, as provided for drawing and summoning trial jurors, and the names of any persons drawn who may not be impaneled upon the grand jury must be again placed in said jury box No. 1."

Section 5. Section 93-1802, R.C.M. 1947, is amended to read as follows:

"93-1802. **How constituted.** When, of the persons summoned as grand jurors competent and not excused, *eleven (11)* are present, they constitute the grand jury. If more than *eleven (11)* of such persons are present, the clerk must write their names on separate ballots, and place *the* ballots in black capsules, which *the* capsules shall be deposited in a box large enough to hold all of *the* capsules without crowding, and which *the* box shall be so arranged that the clerk drawing *the* capsules from *the* box shall be unable to observe or see the capsule he is about to draw, and draw out *eleven (11)* of them, and the persons whose names are on the ballots so drawn shall constitute the grand jury. If less than *eleven (11)* of such persons are present, the court may order a sufficient number to be forthwith drawn from either box and summoned to attend the court. And whenever, of the persons to complete a grand jury, more attend than are required, the requisite number must be obtained by writing the names of those so summoned and not excused on ballots, which *the* ballots shall be placed

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in black capsules, and thereafter deposited in a box, and then drawn as above provided."

Signed: January 24, 1973.

CHAPTER NO. 4

An Act Complying with Article II, Section 26 of the 1972 Montana Constitution, by Providing for Waiver of a Jury Trial and Less Than Twelve (12) Jurors in Felony Trials and Unanimity of all Jurors to Convict in Misdemeanor Trials; Amending Sections 95-1901, 95-1915, and 95-2006, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 95-1901, R.C.M. 1947, is amended to read as follows:

"95-1901. **Method of trial.** (a) All prosecutions except on a plea of guilty, deciding issues of fact shall be tried by the court and jury.

(b) Questions of law shall be decided by the court and questions of fact by the jury except on a trial for libel the jury shall determine both questions of law and of fact. *Questions of law and fact shall be decided by the court when a trial by jury is waived under subsection (d) of this section.*

(c) Defendants in all criminal cases shall have a right to trial by jury not to exceed twelve (12) in number. *The* parties may agree in writing, at any time before the verdict, with the approval of the court that the jury shall consist of any number less than twelve (12).

(d) Upon written consent of the parties a trial by jury may be waived.

(e) The plea of not guilty puts in issue every material allegation of the indictment, information or "complaint."

Section 2. Section 95-1915, R.C.M. 1947, is amended to read as follows:

"95-1915. **Verdict. (a) Return.** The verdict shall be unanimous in all *criminal actions.* Such verdict shall be signed by the foreman and returned by the jury to the judge in open court.

(b) Several defendants. If there are two (2) or more defendants the jury, at any time during its deliberations, may return a verdict or verdicts with respect to a defendant or defendants as to whom it

has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) Conviction of a Lesser Offense. The defendant may be found guilty of an offense necessarily included in the offense charged, or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

(d) Poll of Jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not the required concurrence the jury may be directed to retire for further deliberations or may be discharged."

Section 3. Section 95-2006, R.C.M. 1947, is amended to read as follows:

"95-2006. **Verdict. (a) Return.** The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter, or cause it to be entered in the minutes. *The verdict must be unanimous.*

(b) Several Defendants. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

(c) Poll of Jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not *unanimous* concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(d) Discharge of Jury. The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and and rendered their verdict, unless for good cause the court sooner discharges them."

Signed: January 24, 1973.

CHAPTER NO. 5

An Act Subjecting Justices of the Peace to Impeachment to Comply with Article V, Section 13(1) of the 1972 Montana Constitution; Amending Sections 93-104 and 94-5401, R.C.M. 1947.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-104, R.C.M. 1947, is amended to read as follows:

"93-104. **Jurisdiction.** The court has jurisdiction to try impeachments, when presented by the house of representatives, of the governor, *executive officers, heads of state departments and judicial officers for felonies* and misdemeanors or malfeasance in office."

Section 2. Section 94-5401, R.C.M. 1947, is amended to read as follows:

"94-5401. **Officers liable to impeachment.** The governor, *executive officers, heads of state departments,* and judicial officers shall be liable to impeachment for *felonies* and misdemeanors, or malfeasance in office."

Signed: January 24, 1973.

CHAPTER NO. 6

An Act Amending Section 93-2906, R.C.M. 1947, to Delete Reference to the 1889 Montana Constitution; and to Rearrange Subsection (4) to be More Readable.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-2906, R.C.M. 1947, is amended to read as follows:

"93-2906. **Place of trial may be changed in certain cases.** The court or judge must, on motion, change the place of trial in the following cases:

1. When the county designated in the complaint is not the proper county.

2. When there is reason to believe that an impartial trial cannot be had therein.

3. When the convenience of witnesses and the ends of justice would be promoted by the change.

4. *When the judge is disqualified from acting for any cause; but no change of the place of trial shall be made if:*

(a) the parties agree in writing upon another district judge, or members of the bar as judge pro tempore, or

(b) any qualified district judge is called in, and within thirty (30) days after the motion is made, appears and assumes jurisdiction of the cause and of all matters and proceedings therein.

If the judge so appears he shall be vested with, and shall exerise, all the authority of the judge of the district in which the action or proceeding may be pending."

Signed: January 24, 1973.

CHAPTER NO. 7

An Act to Revise Statutory References to the Constitutional Oath of Office in Accordance with the Provisions of Article III, Section 3 of the Montana Constitution of 1972; Amending Sections 11-719, 11-3326, 16-3204, 59-413, 72-102, R.C.M. 1947; and Repealing Section 59-414, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-719, R.C.M. 1947, is amended to read as follows:

"11-719. **Oath and bonds—vacancy.** Each officer of a city or town must take the *constitutional* oath of office, and such as may be required to give bonds, file the same, duly approved, within ten days after receiving notice of his election or appointment; or, if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed, but if any one, either elected or appointed to office, fails for ten days to qualify as required by law, or enter upon his duties at the time fixed by law, then such office becomes vacant; or if any officer absents himself from the city or town continuously for ten days without the consent of the council, or openly neglects or refuses to discharge his duties, such office may be by the council declared vacant; or if any officer removes from the city or town, or any alderman from his ward, such office must be by the council declared vacant."

Section 2. Section 11-3326, R.C.M. 1947, is amended to read as follows:

"11-3326. **Official oath.** Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to *the constitutional* oath *of office,* to be filed and kept in the office of the commission, that he will in all respects faithfully discharge the duties of his office."

Section 3. Section 16-3204, R.C.M. 1947, is amended to read as follows:

"16-3204. **Oath.** Any person who shall be elected or appointed to the office of county auditor shall, before entering upon the duties of said office, take and subscribe such *constitutional* oath as is required of other county officers."

Section 4. Section 59-413, R.C.M. 1947, is amended to read as follows:

"59-413. **Oath, form of.** Members of the legislative assembly and all officers, executive, ministerial, or judicial, must, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity *(so* help me God*)." No* other oath, declaration, or test must be required as a qualification for any office or *public* trust."

Section 5. Section 72-102, R.C.M. 1947, is amended to read as follows:

"72-102. **Oath.** Each member of said board, and each person appointed to office by said board, before entering upon the duties of his office, shall take and subscribe the oath specified in the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state."

Section 6. Section 59-414, R.C.M. 1947, is repealed.

Approved: January 29, 1973.

CHAPTER NO. 8

An Act to Amend Section 23-2602, R.C.M. 1947, to Comply With Article IV, Section 1 of the 1972 Montana Constitution by Requiring that all Elections be by Secret Ballot.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 23-2602, R.C.M. 1947, is amended to read as follows:

"23-2602. **Elections to be by ballot.** All elections shall be by *secret* ballot."

Approved: January 29, 1973.

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CHAPTER NO. 9

An Act to Amend Section 59-301, R.C.M. 1947, to Comply with Article IV, Section 4 of the 1972 Montana Constitution by Allowing Individuals Eighteen (18) Years of Age *Or* Older to Hold Civil Office.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 59-301, R.C.M. 1947, is amended to read as follows:

"59-301. **Age and citizenship.** No person is *eligible to hold* civil office in this state, who at the time of his election or appointment is not of the age of *eighteen (18)* years *or older* and a citizen of this state."

Approved: January 29, 1973.

CHAPTER NO. 10

An Act Amending Section 94-5402, R.C.M. 1947, to Comply with Article V, Section 13(3) of the 1972 Montana Constitution by Requiring a Vote of Two-thirds of the Members of the House of Representatives Instead of a Vote of a Majority of the Members to Impeach a State Officer.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 94-5402, R.C.M. 1947, is amended to read as follows:

"94-5402. **Sole power of impeachment.** The sole power of impeachment vests in the house of representatives; the concurrence of *two-thirds (2/3)* of all the members being necessary to the exercise thereof. Impeachment shall be tried by the senate sitting for that purpose, and the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor or lieutenant-governor is on trial, the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected."

Approved: January 29, 1973.

CHAPTER NO. 11

An Act Amending Section 93-318, R.C.M. 1947, to Remove the Minimum Jurisdictional Amount for District Courts to Comply

with Article VII, Section 4 of the 1972 Montana Constitution and to Remove Other Superflous Language.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-318, R.C.M. 1947, is amended to read as follows:

"93-318. **Original jurisdiction.** *(1)* The district court has original jurisdiction in*;*

(a) all criminal cases amounting to felony,

(b) all civil and probate matters,

(c) all cases at law and in equity,

(d) all cases of misdemeanor not otherwise provided for, and

(e) all such special actions and proceedings as are not otherwise provided for.

(2) The district court has the power of naturalization, and to issue papers therefor, in all cases where they are authorized to do so by the laws of the United States.

(3) The district court and *its* judges have power to issue, hear, and determine writs of mandamus, quo warranto, certicrari, prohibition, injunction, and other original remedial writs, and all writs of habeas corpus, on petition by, or on behalf of any person held in actual custody in their respective districts. Injunctions, writs of prohibition, and habeas corpus may be issued and served on legal holidays and nonjudicial days."

Approved: January 29, 1973.

CHAPTER NO. 12

An Act to Amend Section 43-901, R.C.M. 1947, to Change the Name of the 'Status of Proceedings' to the 'Daily Journal'; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 43-901, R.C.M. 1947, is amended to read as follows:

"43-901. **Definitions.** For the purposes of this act, the following definitions are adopted.

1. "Person" shall include any person, firm, corporation or association.

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2. "Proceedings of the legislature" shall include status sheets, *daily journal, reproduced* bills, *reproduced* resolutions, *reproduced* memorials, printed bills, printed resolutions and printed memorials and amendments thereto.

3. "One complete set" *is* one copy of each item of the proceedings of the legislature."

Section 2. This act is effective on its passage and approval.

Approved: January 30, 1973.

CHAPTER NO. 13

An Act to Provide for Eight (8) Year Terms for the Justices of the Supreme Court in Accordance with Article VII, Section 7(2) of the 1972 Montana Constitution: Amending Section 93-201, R.C.M. 1947; and Repealing Sections 93-202 through 93-206, R.C.M. 1947, which are Obsolete.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-201, R.C.M. 1947, is amended to read as follows:

"93-201. **Justices — number increased to five — election and term of office.** *The* supreme court *consists* of a chief justice and four associate justices, who *are* elected by the qualified electors of the state at large at the general state elections next preceding the expiration of the terms of office of their predecessors, respectively, and hold their offices for the term of *eight (8)* years from and after the first Monday of January next succeeding their election."

Section 2. Sections 93-202, 93-203, 93-204, 93-205, 93-206, R.C.M. 1947, are repealed.

Approved: February 5, 1973.

CHAPTER NO. 14

An Act Amending Section 93-302, R.C.M. 1947, to Increase the Term of Office of District Court Judges from Four (4) to Six (6) Years to Comply with Article VII, Section 7(2) of the 1972 Montana Constitution.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-302, R.C.M. 1947, is amended to read as follows:

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"93-302. **Number of judges.** In each judicial district there must be the following number of judges of the district court, who must be elected by the qualified voters of the district, and whose term of office must be *six (6)* years, to-wit: In the first, second, eleventh and sixteenth, two judges each, in the thirteenth, eighth and fourth, three judges, and, in all other districts, one judge each.

Approved: February 5, 1973.

CHAPTER NO. 15

An Act to Bring the Qualifications of Supreme Court Justices and District Court Judges in Compliance with Article VII, Section 9 of the 1972 Montana Constitution, by Raising the District Court Residency Requirement from One (1) to Two (2) Years, Providing for a Five (5) Year Practice of Law Requirement and Eliminating Age Requirements; Amending Section 93-702, R.C.M. 1947, and Repealing Section 93-701, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-702, R.C.M. 1947, is amended to read as follows:

"93-702. **Qualifications.** No person *is* eligible *for* the office of *justice of the supreme court or* judge of the district court unless he *is* a citizen of the United States, *who has resided in the state two (2) years immediately before taking office,* and *has* been admitted to practice law in *Montana for at least five (5) years prior to the date of appointment or election. A judge of the district court* need not be a resident of the district for which he is elected *or appointed* at the time of his election *or appointment,* but after his election *or appointment,* he shall reside in the district for which he is elected *or appointed* during his term of office. *Justices of the supreme court shall reside within the state.*"

Section 2. Section 93-701, R.C.M. 1947, is repealed.

Approved: February 5, 1973.

CHAPTER NO. 16

An Act Amending Section 94-4203, R.C.M. 1947, Relating to Punishment for Escapes from State Prison by Defining the Term 'Confined in State Prison.'

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 94-4203, R.C.M. 1947, is amended to read as follows:

"94-4203. **Escapes from state prison — punishment.** Every prisoner confined in state prison for a term less than for life, who escapes therefrom, is punishable by imprisonment in the state prison for a term of not less than one year nor more than ten years; said second term of imprisonment to commence from the time he would have otherwise been discharged from said prison. *A prisoner is deemed to be "confined in state prison" within the meaning of this section if he is under the jurisdiction of the prison authorities even though he might be outside of the prison confines."*

Approved: February 5, 1973.

CHAPTER NO. 17

An Act to Lower the Qualifying Age for the Superintendent of Public Instruction from Thirty (30) to Twenty-five (25) Years to Comply with Article VI, Section 3(1) of the 1972 Montana Constitution; Amending Section 75-5702, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-5702, R.C.M. 1947, is amended to read as follows:

"75-5702. **Election and qualification.** A superintendent of public instruction for the state of Montana shall be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

Any person shall be qualified to assume the office of superintendent of public instruction who:

(1) *is twenty-five (25) years of age or older at the time of his election;*

(2) has resided within the state for the two (2) years next preceding his election;

(3) holds at least a bachelor's degree from any unit of the Montana university system or from an institution recognized as equivalent by the board of education for teacher certification purposes; and

(4) otherwise possesses the qualifications for such office which are required by the constitution of the state of Montana."

Approved: February 5, 1973.

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CHAPTER NO. 18

An Act to Amend Section 89-3411, R.C.M. 1947, to Provide for the Inclusion of Costs of Preliminary and Feasibility Studies for Water Conservancy Districts as Costs of Construction.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-3411, R.C.M. 1947, is amended to read as follows:

"89-3411. **Reimbursement for expenses of organizing election.** If organized, the district shall reimburse the county, or counties, for expenses incurred in the organizing election.

The costs of conducting the preliminary and feasibility studies shall be considered costs of construction of an approved project and shall be included in determination of the repayment schedules by the directors of the district."

Approved: February 5, 1973.

CHAPTER NO. 19

An Act to Amend Section 89-3404, R.C.M. 1947, to Require a Petition Signed by Ten Percent (10%) of the Voters in a Water Conservancy District before a Preliminary Survey is Initiated.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-3404, R.C.M. 1947, is amended to read as follows:

"89-3404. **Preliminary survey—written request.** (1) To request a preliminary survey for a proposed conservancy district, the applicants shall present a written *petition* to the *department.*

(2) The *petition* shall:

(a) be signed by at least ten percent (10%) of the registered voters residing within the boundaries of the proposed conservancy district;

(b) generally describe the proposed boundaries of the district;

(c) specify the purpose or purposes of the district;

(d) list the works contemplated;

(e) request that a preliminary survey be initiated.

(3) The *department* may initiate a preliminary survey without any prior *written petition.*"

Approved: February 5, 1973.

CHAPTER NO. 20

An Act to Amend Sections 71-1516 and 71-1517, R.C.M. 1947, to Include as Persons Eligible for Medical Assistance Benefits Persons Who are Not Eligible for Federal Programs Because of Their Income and to Include Medically Needy Children Under Twenty-one (21) Years, Including All Children Under Twenty-one (21) Who Are In Foster Care: To provide Further the Order of Priorities of Distribution of the Funds Among Those Eligible.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 71-1516, R.C.M. 1947, is amended to read as follows:

"71-1516. **Eligibility requirements for medical assistance.** Medical assistance shall be granted in behalf of all persons who reside in the state of Montana, including residents temporarily absent from the state and who meet any of the following requirements:

(1) Who receive all or part of their income from the federally aided public assistance programs: old-age assistance, aid to the blind, aid to dependent children, and aid to the permanently and totally disabled;

(2) All persons, who upon application, would be eligible for financial assistance under any one of the federally aided programs referred to above:

(3) All persons who would be entitled to financial assistance under one of the federally aided categories except that they do not meet the durational residence requirements or relative responsibility requirements of any of the public assistance programs above enumerated:

(4) Persons in medical institutions who, if they were no longer in such institution, would be eligible for financial assistance under any one of the above programs:

(5) All chidren under twenty-one who meet the conditions of eligibility in the state's plan for aid to dependent children, other than with respect to school attendance:

(6) All children under twenty-one who are in foster care under the supervision of the state:

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(7) All persons whose income is less than one hundred thirty-three and one-third percent (133 1/3%) of the amounts specified as maximum income levels for federally aided categories of assistance.

(8) All medically needy children under twenty-one (21) years of age as defined by the state department of social and rehabilitation services."

Section 2. Section 71-1517, R.C.M. 1947, is amended to read as follows:

"71-1517. **Amount, scope, and duration of assistance.** The amount, scope, and duration of medical assistance granted eligible persons shall be determined by the state department. Payments on behalf of persons in state operated institutions shall be made only from funds appropriated specifically for this purpose, as such funds are available. *However, if available funds are not sufficient to provide an adequate medical care program for all eligible persons, first priority shall be given to those eligible persons enumerated in section 1, subsections (1) through (6) of this act and in such event the state department shall by appropriate rules and regulations have the right to limit, reduce or otherwise curtail the amount, scope, and duration of the medical and remedial care and services made available to those individuals enumerated in section 1, subsections (7) and (8) of this act to the extent necessary to assure the implementation of the established priorities. For the purpose of determining eligibility and amount of assistance to be granted to those individuals covered in section 1, subsections (7) and (8) of this act, the state department shall establish a maintenance standard."*

Approved: February 7, 1973

CHAPTER NO. 21

An Act Implementing Article V, Section 14 of the 1972 Montana Constitution by Providing for a Districting and Apportionment Commission; and Providing for an Immediate Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. During the 1973 legislative session and in each session preceding each federal population census, a commission of five (5) citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts.

Section 2. The majority and minority leaders of each house shall each designate one (1) commissioner. Two commissioners

must be residents of the western congressional district and two commissioners must be residents of the eastern congressional district. The majority leader in each house shall have first choice of the congressional district from which he will select a commissioner. Within twenty (20) days after their designation, the four (4) commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four (4) members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

Section 3. In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

Section 4. Commissioners are entitled to compensation of twenty dollars ($20) per day plus travel and actual expenses while attending commission meetings or in carrying out the official duties of the commission.

Section 5. The executive director of the legislative council, under the direction of the commission, shall provide the technical staff and clerical services which the commission needs to prepare its districting and apportionment plan.

Section 6. Upon request state agencies shall cooperate with the commission and furnish technical assistance and consulting personnel.

Section 7. Before the commission submits its plan to the legislature, it shall hold at least one (1) public hearing on the plan at the state capitol. The commission may hold other hearings as it deems necessary.

Section 8. The first commission shall submit its plan to the 1974 legislature by the tenth legislative day; each subsequent commission shall submit its plan to the legislature by the tenth legislative day of the first regular session after its appointment or after the census figures are available.

Section 9. Within thirty (30) days after the commission submits its plan to the legislature, the legislature shall return the plan to the commission with its recommendations.

Section 10. Within thirty (30) days after receiving the plan and the legislature's recommendations, the commission shall file its final plan with the secretary of state. Upon filing, the plan shall become law and the commission shall be dissolved.

Section 11. A member of the commission may not run for election to a legislative seat within two (2) years after the district-

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ing and apportionment plan in which he participated becomes effective.

Section 12. This act is effective upon passage and approval.

Approved: February 8, 1973.

CHAPTER NO. 22

An Act Placing the Name of the Supreme Court Justices and District Court Judges on the Ballot in Uncontested Elections to Comply with Article VII, Section 8(2) of the 1972 Montana Constitution.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. In the event there is no candidate for the office of supreme court justice or chief justice other than the incumbent, the name of the incumbent shall be placed on the official ballot for the general election as follows:

Shall (chief) justice (here the name of the incumbent justice is inserted) of the supreme court of the state of Montana be retained in office for another term?

☐ YES

☐ NO

(Mark an "x" before the word "YES" if you wish the justice to remain in office. Mark an "x" before the word "NO" if you do not wish the justice to remain in office.)

Section 2. In the event there is no candidate for the office of district court judge in a judicial district of the state other than the incumbent, the name of the incumbent shall be placed on the official ballot for the general election as follows:

Shall judge (here the name of the incumbent judge of the district court is inserted) of the district court of the ..... judicial district of the state of Montana be retained in office for another term in office?

☐ YES

☐ NO

(Mark an "x" before the word "YES" if you wish the judge to remain in office. Mark an "x" before the word "NO" if you do not wish the judge to remain in office.)

Approved: February 8, 1973.

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CHAPTER NO. 23

An Act to Consolidate all Sections Defining Judicial Districts into Section 93-301; Amending Section 93-301, R.C.M. 1947, and Repealing Sections 93-301.1, 93-301.2, 93-301.3, and 93-301.4, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-301, R.C.M. 1947, is amended to read as follows:

"93-301. **Judicial Districts defined.** In this state there are *eighteen* judicial districts, distributed as follows:

First district: Lewis and Clark and Broadwater counties.

Second district: Silver Bow county.

Third district: Deer Lodge, Granite, and Powell counties.

Fourth district: Missoula, Mineral, Lake, Ravalli, and Sanders counties.

Fifth district: Beaverhead, Jefferson, and Madison counties.

Sixth district: Park and Sweet Grass counties.

Seventh district: Dawson, McCone, Richland, and Wibaux counties.

Eighth district: Cascade and Chouteau counties.

Ninth district: Teton, Pondera, Toole, and Glacier counties.

Tenth district: Fergus, Judith Basin, and Petroleum counties.

Eleventh district: Flathead and Lincoln counties.

Twelfth district: Liberty, Hill, and Blaine counties.

Thirteenth district: Yellowstone, Big Horn, Carbon, Stillwater, and Treasure counties.

Fourteenth district: Meagher, Wheatland, Golden Valley, and Musselshell counties.

Fifteenth district: Roosevelt, Daniels, and Sheridan counties.

Sixteenth district: Custer, Carter, Fallon, Prairie, Powder River, Garfield, and Rosebud counties.

Seventeenth district: Phillips and Valley counties.

Eighteenth district: Gallatin county."

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Section 2. Sections 93-301.1, 93-301.2, 93-301.3, and 93-301.4, R.C.M. 1947, are repealed.

Approved: February 8, 1973.

CHAPTER NO. 24

An Act to Amend Sections 82-3314 and 82-3317, R.C.M. 1947, to Require the Department of Administration to Provide Inspection of Montana's Public School Construction Projects.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82-3314, R.C.M. 1947, is amended to read as follows:

"82-3314. **Definitions of building and construction.** In sections 82-3315 to 82-3321, *with the exception of 82-3317 (2),*

(1) "Building" includes:

(a) A building, facility or structure constructed or purchased wholly or in part with state moneys.

(b) A building, facility or structure at a state institution.

(c) A building, facility or structure owned or to be owned by a state agency, including the state highway commission.

(2) "Building" does not include:

(a) A building, facility or structure owned or to be owned by a county, city or town, school district, or special improvement district.

(b) A facility or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration."

Section 2. Section 82-3317, R.C.M. 1947, is amended to read as follows:

"82-3317. **Supervision of construction of buildings.** (1) For the construction of a building costing more than ten thousand dollars ($10,000.00) the state controller shall:

(a) Review and approve all plans and working drawings prepared by architects.

(b) Approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys.

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(c) Under the supervision and with the approval of the board of examiners, solicit, accept and reject bids and award all contracts to the lowest qualified bidder.

(d) Review and, with the consent of the board of examiners, approve all change orders.

(e) Accept the building when completed according to approved plans and specifications.

(f) Concur in construction projects where the proposed cost is less than ten thousand dollars ($10,000.00), but more than three thousand dollars ($3,000.00), provided that before any contract is approved for construction, alteration or improvement no less than three (3) separate informal bids shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(g) Not require the provisions of Montana law relating to advertising, bidding or supervision where proposed construction costs are less than three thousand dollars ($3,000.00).

(2) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping and furnishing during construction, repair or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction revolving account in the revolving fund.

(3) It is the intent of the legislative assembly that student housing and other facilities constructed under the authority of the regents of the university of Montana are subject to the provisions of subsection (1) of this section."

Approved: February 8, 1973.

CHAPTER NO. 25

An Act to Designate the President of the Senate or the Speaker of the House of Representatives Should There Occur a Tie Vote for the Purposes of Organizing Either House.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. In the event there is a tie vote for the purposes of organizing the senate or the house of representatives then, for the purposes of organization, the political party's candidate for president of

the senate or speaker of the house then having a member of his party as the governor of Montana shall be deemed to be elected.

Approved: February 8, 1973.

CHAPTER NO. 26

An Act to Amend Section 16-1179, R.C.M. 1947, Relating to County-owned Civic Center, Youth Center, Recreation Center; and Increasing the Tax Levy.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-1179, R.C.M. 1947, is amended to read as follows:

"16-1179. **County-owned civic center, youth center, recreation center—tax levy for** *maintenance, operation, and equipping.* The board of county commissioners, after a county-owned civic center, youth center, recreation center, or any combination of two or more thereof has been established, may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a special tax not to exceed *two (2) mills* on each dollar of the taxable valuation for any one (1) year, for the purpose of *maintaining, operating, and equipping* such county-owned civic center, youth center, recreation center, or any combination of two or more thereof. All laws applicable to the collection of county taxes shall apply to the collection of the tax herein provided. All funds derived from such tax together with all revenue and income from such civic center, youth center, recreation center, or any combination of two or more thereof shall constitute a separate fund, called the civic-youth-recreation center fund, shall be deposited with the county treasurer, and shall not be used for any purposes except those of such civic center, youth center, recreation center, or any combination of two or more thereof. All claims against such separate fund shall be presented and acted upon in the same manner as are all other claims against the county."

Approved: February 8, 1973.

CHAPTER NO. 27

An Act to Amend Section 46-212, R.C.M. 1947, Changing the Basis for Establishing Livestock Disease Control Areas from Township Boundaries to School District Boundaries.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 46-212, R.C.M. 1947, is amended to read as follows:

"46-212. **Establishment of livestock disease control area—entry into area—compulsory inspection area, when.** Upon receipt of a petition signed by not less than seventy-five per cent (75%) of the livestock owners of the species of animals to be inspected, tested, treated, or vaccinated, and representing not less than fifty per cent (50%) of such species in any *school district, as determined from the permanent records of the board of county commissioners describing school district boundaries,* of any county in the state of Montana, petitioning for the area control, treatment, prevention, or eradication of any dangerous disease of livestock within such *school district,* the Montana *board of livestock* is authorized and empowered to establish such *school district* as a disease control area and to enforce the inspection, test, treatment, or vaccination of all livestock of the species designated within such *school district* in accordance with the rules and regulations promulgated by the Montana *department of livestock* for the inspection, eradication, treatment or vaccination of such livestock and to reimburse the owners of livestock slaughtered by order of the Montana *department of livestock* or its authorized agent in accordance with the laws of Montana governing the payment of such animal or animals.

Provided that in any circumscribed disease control area as established under this act, by the Montana *department of livestock,* no other livestock of the species designated by the Montana *department of livestock* to be inspected, tested, treated, or vaccinated, shall enter the disease control area unless inspected, tested, treated, or vaccinated under the direction of the Montana *department of livestock* or are accompanied by a satisfactory health *certificate* or expect under special permit and restrictions provided by the Montana *department of livestock.*

Provided further that when seventy-five per cent (75%) or more of the *school districts* in any county in Montana are established under this act by the Montana *department of livestock* as disease control *areas,* it becomes mandatory on the part of the remaining livestock owners in such county to submit their livestock of one or more species for inspection, test, treatment, or vaccination, as directed by the Montana *department of livestock.*"

Approved: February 8, 1973.

CHAPTER NO. 28

An Act to Provide for the Joint Nomination and Election of the Governor and Lieuenant Governor in Accordance with Article

VI, Section 2(2) of the 1972 Montana Constitution; and Eliminating the Filing Fee for the Lieutenant Governor; Amending Sections 23-3304, 23-3308, 23-3314, 23-3321, and 23-3513, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 23-3304, R.C.M. 1947, is amended to read as follows:

"23-3304. **Declaration of nomination—filing-fees—printing of victorious write-in candidates on general election ballot.** (1) Each candidate in the primary election, shall send a declaration of nomination to the secretary of state, registrar, or city clerk. *Each candidate for governor must send a joint declaration of nomination with a candidate for lieutenant governor.*

(2) *Each* candidate must sign the declaration and send with it the required filing fee, to be acknowledged by a notary public if by mail, or by the officer of the office at which the filing is made.

(3) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(4) Nominating declarations are filed:

(a) In the office of secretary of state for congressional offices, state or district offices to be voted for in more than one (1) county, members of the legislative assembly, and judges of the district offices

(b) In the office of the registrar for county and district offices to be voted for in one (1) county only, and for township and precinct offices:

(c) In the office of the city clerk for all city officers.

(5) Filing fees are as follows:

(a) For offices having a salary of one thousand dollars ($1,000) or less per annum, ten dollars ($10), except candidates for the *legislature* must pay fifteen dollars ($15):

(b) For offices having a salary of more than one thousand dollars ($1,000) per annum, one per cent (1%) of the total annual salary:

(c) For the offices of county commissioner:

(i) in counties of the first class, forty dollars ($40),

(ii) in counties of the second class, thirty-five dollars ($35),

(iii) in counties of the third class, thirty dollars ($30),

(iv) in counties of the fourth class, twenty-five dollars ($25),

(v) in counties of other classes, ten dollars ($10),

(d) For offices in which compensation is paid in fees, five dollars ($5):

(e) For state, county, and precinct committeemen, delegates to national conventions, and presidential electors, no fees are required.

(6) A person nominated by having his name written in on the primary ballot and desiring to accept the nomination shall not have his name printed on the general election ballot unless he:

(a) Files with the secretary of state, registrar, or city clerk, at least ten (10) days after the primary a written declaration indicating his acceptance of the nomination:

(b) Pays the required filing fee,

(c) Received at least five per cent (5%) of the votes cast for the office at the last preceding general election.

(7) The declaration for nomination shall be in form and contain information, prescribed by the secretary of state. Every declaration must be signed by the elector seeking nomination."

Section 2. Section 23-3308, R.C.M. 1947, is amended to read as follows:

"23-3308. **Ballots, how arranged and voted.** (1) At the primary, there shall be a ballot for each political party entitled to participate. Each ballot shall be printed on a separate sheet of white paper of the same size, folded, and securely fastened at the top.

(2) Candidates' names shall be arranged alphabetically by surnames, under the offices and under the proper party designation. *The names of the candidates for governor and lieutenant governor shall be arranged by the surname of the candidate for governor.* When two (2) or more persons are candidates for nomination for the same office, the registrar shall divide the ballot to provide a rotation of the names of the candidates as follows:

(a) Divide all county ballot forms into sets equal in number to the greatest number of candidates for nomination or election to any office:

(b) Arrange the sets so that candidates' names are rotated by removing one name from the top of the list for each nomination or office and place the name or number at the bottom of the list for each successive set of ballot forms; however, in printing ballots for use in any one (1) precinct, only one (1) set shall be used and they shall be identical:

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(c) If an elector writes the name of a person upon a ballot, and the person's name appears as a candidate upon another ballot, the ballot shall count for the person only as a candidate of the party upon whose ticket his name is written;

(d) If a person is nominated upon more than one (1) ticket, not later than ten (10) days after the election he shall file written notification with the secretary of state, registrar, or city clerk the party under which his name is to appear upon the ballot for the general election, and if he fails to notify the proper officers, his name shall appear under the party with whom his nominating declaration was first filed;

(e) If a person fails to be nominated upon the party ticket contained in his nominating declaration, his name shall not be printed upon any ballot with party designation;

(f) This act does not preclude an elector from having his name printed upon the ballot as an independent candidate, and no candidate shall have his name printed on more than one (1) ticket.

(3) Ballots shall be printed on white paper in the form of the Australian ballot and the candidates of each party shall be printed on a separate ticket.

(4) After preparing his ballot, the elector shall detach it from the remaining tickets and fold it so that the face is concealed and the official stamp is seen;

(a) The elector shall fold the remaining tickets, vote the marked ballot without leaving the polling place, and deposit the remaining tickets in a separate box marked as the blank ballot box;

(b) Immediately after the recount period, the election judges shall, without examination, destroy the tickets deposited in the blank ballot box."

Section 3. Section 23-3314, R.C.M. 1947, is amended to read as follows:

"23-3314. **Copy of abstracts to be sent secretary of state — canvass by secretary of state — governor's certificate of nomination and proclamation — decision by lot in event of tie.** (1) The registrar, immediately after making the abstracts of votes, shall send a copy of each of the abstracts by mail to the secretary of state.

(2) The secretary of state shall, in the presence of the governor and the state treasurer, proceed not later than fifteen (15) days after the date of the primary election to canvass the votes given for nomination for governor and *lieutenant governor,* United States senator, United States representative, attorney general, superintendent of pub-

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lic instruction, railroad commissioners, secretary of state, state treasurer, state auditor, justices of the supreme court, clerk of the supreme court, judges of the district court, members of the legislative assembly, and all other officers voted in any district comprising more than one county.

(3) The governor shall grant a certificate of nomination to the person having the highest number of votes for each office, and shall issue a proclamation declaring the nomination of each person by his party.

(4) When a tie exists between two (2) or more persons for nomination in the same party, the secretary of state shall immediately give notice to the persons tied, to attend in person or by attorney, at his office at a time appointed by him. He shall then publicly decide by lot which person is nominated by his party. The governor shall issue his proclamation declaring the nomination of that person."

Section 4. Section 23-3321, R.C.M. 1947, is amended to read as follows:

"23-3321. **Declining nomination — vacancies before and after primary.** (1) Twenty (20) days or more before the election a person nominated for public office may decline the nomination by a writing sent to the office with whom his nominating declaration is filed. In city elections, the declination shall be made ten (10) days or more before the election.

(2) If a vacancy occurs in the office of a candidate in case of death or removal from the state or district before the date of the primary, the vacancy shall be filled by the affected political party.

(3) When a vacancy occurs in the office of a candidate after the primary and before the general election in any district however constituted, the vacancy shall be filled as follows:

(a) The vacancy shall be filled by a committee of three (3) members selected from each county or district by the county central committees of the county or district of the affected political party.

(b) The Secretary of the committee shall transmit a certificate to the secretary of state with the information contained on the original certificate plus the cause of the vacancy, the name of the person nominated, the office to be filled, and the name of the person for whom the nomination was made.

(c) When the certificate is filed with the secretary of state accompanied by the proper filing fee he shall insert the name of the person nominated to fill the vacancy.

(d) If the secretary of state has certified the nominations to the registrars, he shall immediately certify to the registrars the name of

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the person nominated to fill the vacancy, the office to be filled, the party or political principle he represents, and the name of the person for whom the nominee is substituted.

(4) A vacancy in the position of candidate for governor or lieutenant governor shall not affect the candidacy of the other joint candidate."

Section 5. Section 23-3513, R.C.M. 1947, is amended to read as follows:

"23-3513. **Order of placement.** (1) The order of offices on the ballot in the first column designated "STATE AND NATIONAL," shall be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line, shall be the names and spaces for voting for candidates for president and vice-president. The names of candidates for president and vice-president for each political party shall be grouped together.

(b) United States senator;

(c) United States representative;

(d) Governor and *lieutenant governor;*

(e) Secretary of state;

(f) Attorney general;

(g) State treasurer;

(h) State auditor;

(i) Railroad and public service commissioners;

(j) State superintendent of public instruction;

(k) Clerk of the supreme court;

(l) Chief justice of the supreme court;

(m) Associate justices of the supreme court;

(n) District court judges;

(o) State senators, members of the house of representatives.

If any offices are not to be elected, they shall not be designated but the order of offices to be filled shall maintain their relative positions.

(2) In the column designated, "COUNTY AND TOWNSHIP," the following order of placement shall be observed:

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(a) Clerk of the district court;

(b) County commissioner;

(c) County clerk and recorder;

(d) Sheriff;

(e) County attorney;

(f) County auditor;

(g) Other offices in the order designated by the registrar.

(3) In the third column constitutional amendments shall be followed by referendum and initiative measures."

Approved: February 8, 1973.

CHAPTER NO. 29

An Act to Provide for Succession to the Office of Governor to Implement Article VI, Section 6(1) and Section 14(7) of the 1972 Montana Constitution.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. (1) If the offices of both the governor and the lieutenant governor become vacant, the president of the senate shall become governor and shall appoint a lieutenant governor.

(2) If the president of the senate is unable to assume the office of governor, the speaker of the house shall become governor and a lieutenant governor shall be elected in accordance with the provision of section 2 hereafter.

Section 2. If neither the president of the senate nor the speaker of the house of representatives is able to assume the office of governor, the legislature, meeting in joint session, shall elect a governor and a lieutenant governor. When the speaker of the house becomes governor, the legislature will meet in joint session, and shall elect a lieutenant governor.

Section 3. The successor to the governor and the lieutenant governor shall serve until the next general election and shall have all the powers, duties and emoluments of the respective offices.

Section 4. (1) If both the governor and lieutenant governor are unable to serve as governor, the president of the senate shall become acting governor until the governor or lieutenant governor is able to resume the duties of the office.

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(2) If the president of the senate is unable to become acting governor, the speaker of the house of representatives shall become acting governor.

Section 5. An acting governor shall have all the rights, duties and emoluments of the office of governor while he is so acting.

Approved: February 8, 1973.

CHAPTER NO. 30

An Act to Remove the Governor's Power to Pocket Veto a Bill after Legislative Adjournment in Compliance with Article VI, Section 10(1) of the 1972 Montana Constitution; Amending Section 43-505, R.C.M. 1947, and Repealing Section 43-506, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 43-505, R.C.M. 1947, is amended to read as follows:

"43-505. **Bills remaining with the governor.** Every bill which has passed both houses of the *legislature,* and has not been returned by the governor within five *(5)* days *after its delivery to him if the legislature is in session or within twenty-five (25) days if the legislature is adjourned,* thereby becoming a law, is authenticated by the governor causing the fact to be certified thereon by the secretary of state, in the following form: "This bill having remained with the governor five *(5)* days, and the *legislature* being in session, it has become a law this ..... day of ....., A.D. ....." *or "This bill having remained with the governor twenty-five (25) days, and the legislature being adjourned, it has become a law this ..... day of ....., A.D. ....."* which certificate must be signed by the secretary of state and deposited with the laws in his office."

Section 2. Section 43-506, R.C.M. 1947, is repealed.

Approved: February 8, 1973.

CHAPTER NO. 31

An Act to Comply with Article VI, Section 10(1) of the 1972 Montana Constitution Which Provides that Certain Legislative

Measures Need Not Be Submitted to the Governor; Amending Section 43-501, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 43-501, R.C.M. 1947, is amended to read as follows:

"43-501. **Bills received by the governor, how endorsed.** *Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, initiative and referendum measures, shall be submitted to the governor for his signature. Each* bill must, as soon as delivered to the governor, be endorsed as follows: "This bill was received by the governor this ..... day of ....., 19....." The endorsement must be signed by *an assistant authorized by* the governor, or by the governor himself."

Approved: February 8, 1973.

CHAPTER NO. 32

An Act to Remove Age and Sex Restrictions in the State Militia Allowed by Article VI, Section 13(2) of the 1972 Montana Constitution; Amending Section 77-102, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 77-102, R.C.M. 1947, is amended to read as follows:

"77-102. **Composition of the militia.** The militia of the state of Montana shall consist of all able-bodied citizens of the United States residing within this state, and said militia shall be divided into two classes, the national guard of Montana and the unorganized militia."

Approved: February 8, 1973.

CHAPTER NO. 33

An Act to Amend Sections 11-2303, 16-808 and 75-7104, R.C.M. 1947, to Delete References to Article XIII, Sections 5 and 6 of the 1889 Constitution and Defining Taxable Property.

Be it enacted by the Legislative Assembly of the State of Montana:

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Section 1. Section 11-2303, R.C.M. 1947, is amended to read as follows:

"11-2303. **Limitation on amount of indebtedness.** No city or town shall issue bonds for any purpose in an amount which, with all outstanding and unpaid indebtedness, will exceed five per centum (5%) of the *assessed* value of the taxable property therein, to be ascertained by the last assessment for state and county taxes; provided, however, that for the purpose of constructing a sewerage system, or procuring a water supply or constructing or acquiring a water system for a city or town, which shall own and control such water supply and water system and devote the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds. The additional indebtedness which may be incurred by borrowing money or issuing bonds for the construction of a sewerage system, or for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted, which is unpaid or outstanding, shall not in the aggregate exceed ten per centum (10%) over and above the five per centum (5%) heretofore referred to, of the total value of the taxable property therein as ascertained by the last assessment for state and county taxes. *The* issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds shall not be deemed the incurring of a new or additional indebtedness, but shall be deemed merely the changing of the evidence of outstanding indebtedness."

Section 2. Section 16-808, R.C.M. 1947, is amended to read as follows:

"16-808. **Counties indebted beyond constitutional limit may operate on cash basis.** That in case the total indebtedness of a county, lawful when incurred, by reason of great diminution of *assessed* value exceeds the limit of five per centum (5%) it shall be lawful for said county and it is hereby authorized and empowered to thereafter manage and conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of said county out of the cash in the county treasury and derived from its current revenue, and under such restrictions and regulations as may be imposed by the board of county commissioners of said county by a resolution duly adopted and spread upon the minutes of said board; provided, however, that nothing herein shall restrict the right of said board to make the necessary tax levies for interest and sinking fund purposes, and provided further that nothing herein shall affect the right of any creditor of said county to pursue any remedy now given him by law to obtain payment of his claim."

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Section 3. Section 75-7104, R.C.M. 1947, is amended to read as follows:

"75-7104. **Limitations on amount of bond issue.** The maximum amount for which each school district shall become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is five per cent (5%) of the assessed value of the taxable property therein as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. All bonds issued in excess of such amount shall be null and void.

When the total indebtedness of a school district has reached the five per cent (5%) limitation prescribed in this section, such school district shall have the power and authority to pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this Title.

Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded shall be applied towards the payment of such bonds and the refunding bond issue shall be decreased accordingly."

Approved: February 8, 1973.

CHAPTER NO. 34

An Act to Amend Section 75-7303, R.C.M. 1947, to Allow for the Acceptance and Distribution of Moneys Provided from Federal Sources for the Express Purpose of Distribution to Non-public Education as Provided for by Article X, Section 6(2) of the 1972 Montana Constitution.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7303, R.C.M. 1947, is amended to read as follows:

"75-7303. **Acceptance and expenditure of federal moneys for** state. The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept such moneys as are now or will be made available under any Act of Congress of the United States, or otherwise, for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of

Montana and as authorized by the grants from the federal government. Such moneys shall be deposited by the governor and superintendent of public instruction *in* the state *treasury,* and are appropriated and made available to the superintendent of public instruction. All such moneys shall be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. *The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept moneys provided from federal sources for the express purpose of distribution to non-public education. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury, and are appropriated and made available to the superintendent of public instruction. All such moneys shall be distributed in the manner provided by the laws of the state of Montana and as authorized or expressed by grants from the federal government. All* expenditures *of moneys from federal sources under this section* shall be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which such moneys are maintained shall not lapse at any time but shall be continuously available to the superintendent of public instruction for expenditures consistent with this act and acts of the federal government."

Approved: February 8, 1973.

CHAPTER NO. 35

An Act Implementing Article XIV, Sections 2 and 9 of the 1972 Montana Constitution Concerning Constitutional Revision by Providing Two (2) Forms of People's Initiative Petitions, Time for Filing Petitions, and Amending Section 37-109, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 37-201, R.C.M. 1947, which reads as follows:

37-201. **Form for people's initiative petition on the question of calling a constitutional convention.** The following shall be substantially the form for the people's initiative petition on the question of calling a constitutional convention:

WARNING

Any person signing any name other than his own to this

petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a qualified elector of this state, is punishable by a fine not exceeding five hundred dollars ($500), or imprisonment in the penitentiary not exceeding two (2) years, or by both. (Section 37-109, Revised Codes of Montana, 1947)

PEOPLE'S INITIATIVE PETITION ON THE QUESTION OF CALLING A CONSTITUTIONAL CONVENTION

To the Honorable ....., Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully request that the question of whether there shall be an unlimited convention to revise, alter, or amend the constitution be submitted to the qualified electors of the state of Montana for their approval or rejection at the general election to be held on the ..... day of ....., 19....., and each qualified elector says for himself:

I have personally signed this petition, and my residence, post office address, and voting precinct are correctly written after my name.

Name ..... Residence .....

Post Office Address .....

If in city, street and number .....

Voting precinct ..... Representative Dist. No. .....

(Each sheet shall be in substantially the form above and contain numbered lines for names.)

Section 2. There is a new section to be numbered 37-202, R.C.M. 1947, which reads as follows:

37-202. **Form for people's initiative petition for constitutional amendment.** The following shall be substantially the form for people's initiative petition for constitutional amendment.

WARNING

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a qualified elector of this state, is punishable by a fine not exceeding five hundred dollars ($500), or imprisonment in the penitentiary not exceeding two (2) years, or by both. (Section 37-109, Revised Codes of Montana, 1947)

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PEOPLE'S INITIATIVE PETITION
FOR CONSTITUTIONAL AMENDMENT

To the Honorable ....., Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully request that the following proposed constitutional amendment shall be submitted to the qualified electors of the state of Montana, for their approval or rejection, at the statewide election to be held on the ..... day of ....., 19....., and each qualified elector says for himself:

I have personally signed this petition, and my residence, post office address, and voting precinct are correctly written after my name.

Name ..... Residence .....

Post Office Address .....

If in city, street and number .....

Voting precinct ..... Representative Dist. No. .....

(Each sheet for petitioner's signature shall be in substantially the form above and contain numbered lines for names. A full and correct copy of the title and text of the proposed constitutional amendment shall be included in or attached to each sheet of the petition.)

Section 3. There is a new section to be numbered 37-203, R.C.M. 1947, which reads as follows:

37-203. **Time for filing petitions.** Petitions in this chapter shall be filed with the secretary of state on or before one hundred twenty (120) days prior to the election at which they are to be voted upon by the people.

Section 4. Section 37-109, R.C.M. 1947, is amended to read as follows:

"37-109. **Who may petition—false signature—penalties.** *Each* qualified elector of the state of Montana may sign a petition for the referendum or for the initiative *or for constitutional referendum or constitutional initiative.* Any person signing any name other than his own to *a* petition, or signing *one* more than once for the same measure at one election, or who is not, at the time of signing *a petition,* a *qualified elector* of this state, or any officer or any person willfully violating any provision of this statute, shall, upon conviction thereof, be punished by a fine not exceeding five hun-

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dred dollars *($500),* or by imprisonment in the penitentiary not exceeding two *(2)* years, or by both."

Approved: February 8, 1973.

CHAPTER NO. 36

An Act Implementing Article XIV, Section 3 of the 1972 Montana Constitution, Providing for the Submission of the Question of Whether or Not to Hold a Constitutional Convention at Least Every Twenty (20) Years.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Unless otherwise submitted earlier, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in 1990. The same question shall be submitted at the general election in each twentieth year following its last submission, unless otherwise submitted earlier.

Section 2. The ballot submitting the question to the people shall contain the attorney general's explanatory statement and the following:

Pursuant to article XIV, sections 3 and 4 of the Montana constitution, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in each twentieth year following its last submission. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session.

☐ FOR CALLING A CONSTITUTIONAL CONVENTION

☐ AGAINST CALLING A CONSTITUTIONAL CONVENTION

Approved: February 8, 1973.

CHAPTER NO. 37

An Act Implementing Article XIV, Sections 8 and 9(3) Concerning Amendment by Initiative of the 1972 Montana Constitution by Providing a New Effective Date for Constitutional Amendments; Amending Section 37-108, R.C.M. 1947.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 37-108, R.C.M. 1947, is amended to read as follows:

"37-108. **Canvass of votes.** The votes on measures and questions shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned, and the abstract made by the several county clerks of votes on measures shall be returned to the secretary of state on separate abstract sheets in the manner provided by sections *23-3314 and 23-4015* for abstracts of votes for state officers. It shall be the duty of the state board of canvassers to proceed within thirty (30) days after the election, and sooner if the returns be all received to canvass the votes given for each measure, and the governor shall forthwith issue his proclamation, giving the whole number of votes cast in the state for and against each measure and question, and declaring such measures as are approved by a majority of those voting thereon to be in *effect the first day of July following its approval, unless the amendment provides otherwise,* designating such measures by their titles."

Approved: February 8, 1973.

CHAPTER NO. 38

An Act Implementing Article XIV, Section 9(2) Concerning Amendment by Initiative of the 1972 Montana Constitution by Providing New Timing for Publication of Proposed Amendments to the Constitution; Amending Section 23-2802, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 23-2802, R.C.M. 1947, is amended to read as follows:

"23-2802. **Publication and printing of amendments to constitution.** If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall:

(1) Have the proposed amendment or amendments published in full *twice each month for two (2) months previous to the election at which they are to be voted upon by the people* in *not less than* one (1) newspaper *commonly circulated* in each county.

(2) Have a pamphlet printed containing an exact copy of the proposed amendment or amendments, an exact copy of existing constitutional provisions to be revised, and the amendment or amendments in the form in which it or they will be printed on the official

ballot. The printed pamphlets shall be distributed as provided in section 37-107, R.C.M. 1947.''

Approved: February 8, 1973.

CHAPTER NO. 39

An Act to Provide for the Licensing and Bonding of Merchandisers of Grain; and Repealing Section 3-228, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Unless the context requires otherwise, as used in this act:

(1) "Person" means any person, merchandiser, grain dealer, firm, public warehouseman, commercial feed lot operator, trucker, exchange, broker, partnership, corporation, organization, commissionman, trust, association of persons, track buyer, shipper, hauler, contractor, cash buyer, unincorporated association, municipality, or society, however formed.

(2) "Grain" includes the natural products of the farm and shall also be construed to include flax.

(3) "Haul" means to transport grain or farm products by any vehicle on land or on water.

(4) "Merchandise" means to sell, buy, haul, ship, contract, cause a contract to be let, trade, carry on commerce, traffic, aid and distribute, abet in the movement of any commodity, and assemble and distribute farm products or grain.

(5) "For hire" means for remuneration of any kind, paid or promised either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements whereby a remuneration is obtained or derived for transportation service. Transportation by a person not in the transportation business is not a service for hire, even though the person owning the property transported shares in the cost or pays for the movement.

(6) "Department" means department of agriculture.

Section 2. (1) A person may not merchandise grain without obtaining a license under this act and without obtaining a certificate of authority if that certificate is required under section 15-2363, R.C.M. 1947.

(2) Licenses to engage in the business of merchandising of grains shall be issued by the department to reputable persons who

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apply in writing, submit the scheduled fee, and set forth under oath the place where the applicant intends to carry on the business for which the license is desired. A separate license is required for each place of business. Each vehicle or vessel used shall be noted on the application.

(3) A person merchandising grain shall before July 1 pay the department a minimum license fee of fifteen dollars ($15) for each year or part of a year, for each place of business owned, operated, or conducted by that person. The department may by rule establish the license fees, which may be graduated according to the volume of business conducted by a licensee and which shall bear a reasonable relationship to the cost of administering this act and section 3-229.

(4) All license fees shall be transmitted to the state treasurer, and shall be deposited in the general fund.

(5) All licenses expire on June 30 of each year.

(6) A person is exempt from the licensing requirement of this section if he:

(a) is a producer or a feed lot operator within Montana who buys and hauls grain for his own use, in his own vehicle, for his own feed lot or his farm;

(b) hauls grain for hire, does not acquire title, and is hauling from an elevator or public warehouse previously licensed;

(c) hauls grain for hire, for a producer or feed lot operator for the producer's or feed lot operator's own use within Montana, and does not acquire title to the grain;

(d) is a custom combiner hauling grain that he himself combines.

Section 3. (1) The department may, after notice and an opportunity for a hearing in accordance with the Montana Administrative Procedure Act has been afforded to the licensee, suspend or revoke a license if the licensee has failed to comply with this act or rules of the department, or if the licensee has:

(a) violated this act or section 3-229;

(b) been found guilty of fraud, deceit, dishonesty, forgery, burglary, or larceny;

(c) failed or refused to furnish information, records, or reports required by statute or rule.

(2) The department may, in accordance with the Montana Administrative Procedure Act, summarily suspend a license where

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the public health, safety, or welfare imperatively requires emergency action.

Section 4. A nonresident applying for a license shall file a written power of attorney designating the secretary of state as the agent of the nonresident upon whom service of process may be had in the event of any legal action against the nonresident. A nonresident who has a duly appointed resident agent upon whom legal process may be served as provided by law is not required to designate the secretary of state as his agent for service of process. The department shall be furnished a copy of the designation of the resident agent, which copy shall be certified by the secretary of state.

Section 5. (1) Before a license is issued or renewed the applicant or licensee shall file with the department a bond in an amount the department prescribes, but not less than fifteen thousand dollars ($15,000). The bond shall:

(a) cover the period of one (1) license year or any part of the license year;

(b) be executed by a corporate surety authorized to do business in the state and be conditioned upon the faithful performance of the acts and duties required by section 3-229;

(c) be filed with the department before July 1 each year on a form prescribed by the department.

(2) The department may require an additional bond, if the grain business conducted warrants an increase, which shall cover all transactions of merchandising grains.

(3) A person injured by breach of an obligation, for which a bond is given to the department, may take action against the bond in his own name to recover damages caused by the breach.

(4) Liability of the surety upon the bond is limited to the amount of the bond. However, if two (2) or more persons are injured by breach of the obligations for which the bond is given and the damages for violating the conditions of the bond exceed the specified amount of the bond, the recovery on the bond shall be prorated by the surety among all of those injured.

(5) All bonds expire on June 30 each year.

Section 6. In addition to the bond and license, a public warehouseman shall obtain and maintain insurance approved by the department as adequate to protect the holders of warehouse receipts from loss. A license shall not be issued to a public ware-

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houseman or may be revoked, if the public warehouseman fails to comply with this insurance requirement.

Section 7. A person who violates this act is guilty of misdemeanor and shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500). Each day of violation is a separate offense.

Section 8. If any part of this act is invalid, all valid parts that are severable from the invalid part remain in effect.

Section 9. Section 3-228, R.C.M. 1947, is repealed.

Approved: February 8, 1973.

CHAPTER NO. 40

An Act Amending Section 23-2701, R.C.M. 1947, Qualifications of Voter, to Comply with Article IV, Section 2 of the 1972 Montana Constitution and Federal Supreme Court Decisions by Allowing Individuals Eighteen (18) Years of Age or Older to Vote in All Elections, Amending the Residency Requirements, and Restricting a Felon's Right to Vote Only While He Is Serving a Sentence in a State Institution; Repealing Section 11-716, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 23-2701, R.C.M. 1947, is amended to read as follows:

"23-2701. **Qualifications of voter.** (1) No person may be entitled to vote at elections unless he has the following qualifications:

(a) He must be registered as required by law;

(b) He must be eighteen (18) years of age *or older;*

(c) *He must be a resident of the state of Montana and of the county in which he offers to vote for at least thirty (30) days.*

(d) He must be a citizen of the United States;

(2) No person convicted of a felony has the right to vote *while he is serving a sentence in a penal institution.*

(3) No person adjudicated *to be of unsound mind* has the right to vote unless he has been restored to capacity as provided by law."

Section 2. Section 11-716, R.C.M. 1947, is repealed.

Approved: February 10, 1973.

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CHAPTER NO. 41

An Act to Delete the Requirement that the State Archivist Establish a Records Management Program, Amending Section 82-3209, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82-3209, R.C.M. 1947, is amended to read as follows:

"82-3209. **Archivist to preserve noncurrent records of permanent value.** The state archivist shall preserve noncurrent records of permanent value. Upon request, he shall assist and advise in the establishment of records management programs, in the executive, legislative, and judicial branches of state government with due regard to the functions of the officers and agencies involved."

Approved: February 10, 1973.

CHAPTER NO. 42

An Act to Repeal Section 4-108, R.C.M. 1947, Pertaining to the Salaries of the State Liquor Administrator and His Employees, in its Entirety.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 4-108, R.C.M. 1947, is repealed.

Approved: February 10, 1973.

CHAPTER NO. 43

An Act Relating to Ethics for State Officers and Employees to Partially Implement Article XIII, Section 4 of the 1972 Montana Constitution by Amending Section 59-501, R.C.M. 1947; Amending Section 82-1922, R.C.M. 1947, to Delete Provisions Concerning Conflicts of Interest; Repealing Section 82-1144, R.C.M. 1947; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 59-501, R.C.M. 1947, is amended to read as follows:

"59-501. **Certain officers not to be interested in contracts.** Members of the *legislature,* state, county, city, town, or township offi-

cers *or any deputy or employee thereof,* must not be interested in any contract made by them in their official capacity, or by any body, *agency,* or board of which they are members *or employees. In this section:*

(1) The term "be interested in" does not include holding a minority interest in a corporation.

(2) The term "contract" does not include:

a. contracts awarded to the lowest responsible bidder based on competitive bidding procedures, or

b. Merchandise sold to the highest bidder at public auctions, or

c. investments or deposits in financial institutions which are in the business of loaning or receiving money, or

d. contracts for professional services."

Section 2. Section 82-1922, R.C.M. 1947, is amended to read as follows:

"82-1922. **Transfer of contract forbidden—agreement between bidders invalidates contracts—interest in contracts by** *state* **officers** forbidden—penalty. No contract or order or any interest therein shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract so transferred, at the option of the state. Collusion or secret agreements between bidders for the purpose of securing any advantage to the bidders as against the state of Montana in the awarding of contracts is hereby prohibited, and the state purchasing agent and state board of examiners *shall have the right to declare any contract null and void* if they shall find sufficient evidence after *a* contract has been let that said contract was obtained by any bidder or bidders, by reason of collusive or secret agreement among the bidders to the disadvantage of the state of Montana.

All rights of action, however, for any breach of such contract by the contracting parties are reserved to the state. *Any person who violates the provisions of this act is guilty of a misdemeanor and shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) and the state of Montana shall have the right at its option to declare any contract in violation of the provisions of this act void ab initio."*

Section 3. Section 82-1144, R.C.M. 1947, is hereby repealed.

Section 4. This act shall be effective upon passage and approval.

Approved: February 10, 1973.

CHAPTER NO. 44

An Act to Amend Section 66-2426, R.C.M. 1947, to Provide for an Exemption for Water Conditioner Installers from Regulation Under the Board of Plumbing Examiners.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-2426, R.C.M. 1947, is amended to read as follows:

"66-2426. **Exceptions from act.** This act shall not be construed to apply to, or to affect, *installation of water conditioner services in private dwellings or* plumbing installations in any mines, mills, smelters, refineries, reduction works, public utilities, manufacturing industries, or plumbing installations on farms having their own individual water supply or sewage disposal system."

Approved: February 14, 1973.

CHAPTER NO. 45

An Act Amending Section 75-7810, R.C.M. 1947, Relating to Tuition and Transportation Payments for Children Attending an Institution Supported Solely by Funds of the State of Montana by Providing that the Provisions of such Section Shall Apply to Summer Sessions of such Institutions as well as the Regular Sessions of such Institutions.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7810, R.C.M. 1947, is amended to read as follows:

"75-7810. **No tuition when attending a state institution.** When a child is attending an institution supported solely by funds of the state of Montana, the resident district or county shall not be required to pay tuition to the state institution for such child, but whenever at the recommendation of institution officials such child attends classes conducted by a school within a local district, the district wherein the parents or guardian of the child maintain legal residence shall pay tuition to the district or county operating the school in accordance with the provisions of section 75-7201 or section 75-7808, whichever section applies to the circumstances of the child. Transportation payments shall be made for students enrolled in such classes or receiving training, *including summer sessions,* at the state institution. The schedule of transportation payments shall be approved in accordance with existing special

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education transportation payment schedules and shall be approved by the county transportation committee and the superintendent of public instruction."

Approved: February 14, 1973.

CHAPTER NO. 46

An Act Amending Section 53-626, R.C.M. 1947, Relating to Exemptions from Additional Truck, Trailer, and Bus Fees; Providing that all Vehicles Lawfully Displaying a Licensed Dealer's Plate as Provided in Section 53-122, R.C.M. 1947, and having a Gross Laden Weight of Less Than Twenty-four Thousand (24,000) Pounds, shall be Exempt While in the Process of Demonstration in the Course of the Dealer's Business.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 53-626, R.C.M. 1947, is amended to read as follows:

"53-626. **Exemptions from act.** Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within fifteen (15) miles from such limits shall be exempt from the provisions of this act; provided that motor vehicles brought or driven into Montana by any nonresident migratory bona fide agricultural worker temporarily employed in agricultural work in this state where said motor vehicles are used exclusively for transportation of agricultural workers shall likewise be exempt from the provisions of this act; and further providing all vehicles lawfully displaying a licensed dealer's plate as provided in section 53-122, Revised Codes of Montana, 1947, shall be exempt from the provisions of this act when moving to or from a dealer's place of business when unladen or laden with dealer's property only, *and, in the case of vehicles having a gross laden weight of less than twenty-four thousand (24,000) pounds, while in the process of demonstration in the course of the dealer's business.*"

Approved: February 14, 1973.

CHAPTER NO. 47

An Act Amending Section 32-3201, R.C.M. 1947, Relating to Additional Truck, Trailer, and Bus Fees: Providing that with Repect to Vehicles Operating on the Highways with a Current Rear Windshield Sticker Issued Under the Provisions of Sec-

tions 53-109.1 and 53-109.2, R.C.M. 1947, Such Fees Shall be Due and Payable at the Time of Registration of the Vehicle.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 32-3201, R.C.M. 1947, is amended to read as follows:

"32-3201. **Time for payment of fees.** A person who owns or operates a vehicle subject to the fees provided in chapter 197, sections 6-201, 6-202, 6-203, 6-204, 6-205, 6-206, 6-207, 6-208, and 6-210 [32-3301 to 32-3308, 32-3310] and acts amendatory thereto shall pay the fees provided in this chapter.

Prior to or at the time of registration of such vehicle as required under Title 53, Revised Codes of Montana, 1947, and acts amendatory thereto, or prior to the operation of such vehicle on the public highways, fees paid shall be the full amount provided in this chapter unless otherwise provided by law. *With respect to vehicles operating on the highways with a current rear windshield sticker issued under the provisions of section 53-109.1 or section 53-109.2, the fees provided in this chapter shall be due and payable at the time of registration.*

A person who makes application for license after the first day of July of any year shall pay one-half (½) of those fees."

Approved: February 14, 1973.

CHAPTER NO. 48

An Act Amending Section 27-614, R.C.M. 1947, Relating to License Fees for Food Purveyors.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 27-614, R.C.M. 1947, is amended to read as follows:

"27-614. **Application for license—fee.** (1) An application for a license is made to the department on forms, and contains information, required by the department.

(2) For each license issued, the department shall collect a fee of *ten dollars ($10)*. It shall deposit receipts in the state general fund."

Approved: February 14, 1973.

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CHAPTER NO. 49

An Act to Centralize Review of School Construction Plans in the Department of Administration.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. All school construction plans requiring state review and approval shall be submitted to the department of administration for approval. The department of administration shall be responsible for coordination of school construction plan review and approval required by any other state agency.

Approved: February 14, 1973.

CHAPTER NO. 50

An Act Prohibiting Insurance Companies Issuing Disability Insurance Policies in Montana from Excluding Therefrom Coverage for Services Rendered an Insured While a Resident of a Montana State Institution, if Such Services Would have Been Covered if Rendered to an Insured Outside such Institution; Defining "Issued in Montana"; Providing that Such Exclusion, if Appearing in a Disability Insurance Policy Issued in Montana after the Effective Date of this Act, is Void: Providing for Rate of Payment: and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. From and after the effective date of this act, it shall be unlawful for any insurance company or health service corporation issuing disability insurance policies in Montana to exclude from coverage in a disability insurance policy services rendered the insured while a resident in a Montana state institution; provided such services to such insured would be covered by such disability insurance policy if rendered to him outside such Montana state institution.

Section 2. A disability insurance policy shall be deemed to be "issued in Montana" if the insured purchasing such disability insurance policy is, at the time of such purchase, residing in the state of Montana.

Section 3. If the exclusion, prohibited by this act, should appear in a disability insurance policy issued in Montana after the effective date of this act, such provision shall be deemed void and such disability insurance policy will be deemed to cover services rendered the insured in a Montana state institution if such services would have been covered if rendered to an insured outside of a Montana state institution.

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Section 4. Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of such disability policy, which would be paid for such services if rendered outside a Montana state institution.

Section 5. This act is effective on its passage and approval.

Approved: February 14, 1973.

CHAPTER NO. 51

An Act to Amend Section 89-1804, R.C.M. 1947, to Remove the Maximum Limit on Levies Made for Irrigation District Administration, Maintenance and Repairs.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-1804, R.C.M. 1947, is amended to read as follows:

"89-1804. **Annual tax levy—apportionment when tracts divided.** (1) On or before the second Monday in July each year the board of commissioners of each irrigation district organized hereunder shall ascertain the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs, and the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district, including any indebtedness incurred under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States as in section 89-1301 provided, and shall levy against each forty-acre tract or fractional lot as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than forty-acre tracts or in less than the platted lot, then against each such tract) of land in the district, that portion of the said respective total amounts so to be raised which the total irrigable area of any such tract bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district shall be assessed and required to pay the same amount as every other acre of irrigable land therein, unless otherwise specifically provided; providing however, that the board of commissioners may make a minimum charge of five dollars ($5.00) against each separately owned tract of land, regardless of its size.

(2) In the event that the ownership of any such forty-acre tract, or other subdivision of land in the district, shall be divided after a special tax or assessment against the same has been levied,

each or either of the owners of such tract or subdivisions shall be entitled to have such special tax or assessment equitably apportioned to and against said divisions of such tract or subdivisions, so that each owner shall be enabled to pay such special tax or assessment against his portion of such tract or subdivision, and have the same discharged from the lien thereof; providing however, that in no event shall the charge against any separately owned tract of land be less than five dollars ($5.00).

(3) Whenever the board of commissioners has provided for the payment of any indebtedness of the district by levy of a special tax or assessment, and thereafter makes provision for the payment of said indebtedness by the issuance of bonds, said board may cancel any portion or all of said levy theretofore made to raise funds to pay said indebtedness; and whenever said board has provided for the payment of any indebtedness of the district by the authorization of bonds and the levy of a special tax or assessment to pay the principal of and interest on said bonds, the [and] thereafter cancels said issue of bonds as provided for in section 89-1707 said board may cancel any portion or all of said levy theretofore made to raise funds to pay the principal of or interest on said bonds so canceled, and refund to the respective persons paying the same the funds, if any, in the custody of the county treasurer collected for the purpose of meeting the principal of and interest on such bonds so canceled.

(4) Any land or lands which may for any reason have escaped assessment in any previous year or years may be assessed or listed for the omitted years and omitted charges, in any subsequent year at the time of the making of the assessment in and for such subsequent year, but no such assessment shall be made later than three years after the occurrence of such omission."

Approved: February 14, 1973.

CHAPTER NO. 52

An Act Amending Section 85-302, R.C.M. 1947, Providing for the Physical Segregation of Imitation Indian Articles from Authentic Indian Articles.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 85-302, R.C.M. 1947, is amended to read as follows:

"85-302. **Imitation Indian articles to be clearly designated.** No person shall distribute, sell, or offer for sale in this state any imitation

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American Indian arts or crafts articles unless the articles are at all times clearly and legibly designated as imitation. *All imitation articles shall be physically segregated from authentic Indian articles for display purposes."*

Approved: February 14, 1973.

CHAPTER NO. 53

An Act Repealing Section 3-2920, R.C.M. 1947, Which Provided for the "Montana Wheat Research and Marketing Act" to Be in Effect for Seven (7) Years from August 20, 1967.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 3-2920, R.C.M. 1947, is repealed.

Approved: February 14, 1973.

CHAPTER NO. 54

An Act Providing that No Special Risk Classification may be Established Based on Anything in a Driving Record Which is Three (3) Years Old or Older: Amending Section 40-3640, R.C.M., 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 40-3640, R.C.M. 1947, is amended to read as follows:

"40-3640. **Standards applicable to rates.** The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided, and (2) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided, and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided

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and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(b) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both country-wide and those specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state; and in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available.

Consideration may also be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(c) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

(d) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both.

Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations, *except that no special risk classification may be established based on anything adverse to the insured in a driving record which is three (3) years old or older.* Such classifications and modification shall apply to all risks under the same or substantially the same circumstances or conditions."

Approved: February 25, 1973.

CHAPTER NO. 55

An Act Amending Section 54-132, R.C.M. 1947, by Removing the Presumption to a Deferred Imposition of Sentence for the First

Violation of Sale of Dangerous Drugs by a Person Twenty-one (21) Years of Age or Under.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 54-132, R.C.M. 1947, is amended to read as follows:

"54-132. **Criminal sale of dangerous drugs.** (a) A person commits the offense of a criminal sale of dangerous drugs if he sells, manufactures, prepares, cultivates, compounds or processes any dangerous drug as defined in this act and does not come within the exceptions of section 54-131.

(b) A person convicted of criminal sale of dangerous drugs shall be imprisoned in the state prison for a term not less than one (1) year nor more than life."

Approved: February 25, 1973.

CHAPTER NO. 56

An Act Amending Section 11-1814, R.C.M. 1947, by Providing for the Abolition of Residency Requirements for Policemen.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-1814, R.C.M. 1947, is amended to read as follows:

"11-1814. **Qualification of policemen.** The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty (20) years of age nor more than forty *(40)* years of age, provided, however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five *(65)* years, or who shall have served continuously as a police officer for a period of not less than twent-five *(25)* years, or who shall have become incapacitated to perform the duties of his office by reason of injury or accident sustained while actually engaged in the performance of his duties as an officer.

A police officer must be a citizen of the United States.

Every police officer must be able to speak and write understandingly the English language."

Approved: February 25, 1973.

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CHAPTER NO. 57

An Act Amending Section 32-3602, R.C.M. 1947, Allowing Counties with More Than Six Thousand (6,000) Feet of Bridges and Less Than Twenty Million Dollars ($20,000,000) Taxable Value an Additional Bridge Levy of Two (2) Mills.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 32-3602, R.C.M. 1947, is amended to read as follows:

"32-3602. **Special bridge taxes—levy and collection.** (1) Each board may levy a special tax not to exceed three (3) mills on all taxable property in the county for the purpose of constructing, maintaining and repairing free public bridges.

(2) An additional levy for these purposes may be made under the following conditions:

(a) In any county where the total linear feet of bridges or bridge construction is more than four thousand (4,000) feet and the taxable value of property in that county is four million dollars ($4,000,000) or less, the board may, if necessary, levy one (1) mill.

(b) In counties where the total linear feet of bridges or bridge construction is more than six thousand (6,000) feet and the taxable value of property in that county is not less than four million dollars ($4,000,000) nor more than *twenty million dollars ($20,000,000),* the board may, if necessary, levy two (2) mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. The money shall be kept as a special bridge fund, subject to the order of the board for use as herein provided, and shall not be transferable to any other fund."

Approved: February 25, 1973.

CHAPTER NO. 58

An Act to Amend Section 76-107, R.C.M. 1947, to Provide for Supervisors in Conservation Districts Which Include Incorporated Municipalities Within its Boundaries.

Be it enacted by the Legislative Assembly of the State of Montana:

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Section 1. Section 76-107, R.C.M. 1947, is amended to read as follows:

"76-107. **Appointment, qualifications and tenure of supervisors.** The governing body of the district shall, *if there are no incorporated municipalities within the boundaries of said district,* consist of five (5) or seven (7) supervisors, elected or appointed as provided herein.

In all cases where the boundaries of such conservation district include any incorporated municipality or municipalities, said board of supervisors, in addition to said five (5) elected supervisors, shall consist of two (2) appointed supervisors, making a total of seven (7) supervisors in such districts. The two (2) appointed supervisors must be residents of the municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall, after consultation with the elected supervisors, appoint the two (2) additional supervisors. The term of office of the appointed supervisors shall be three (3) years.

Where there are more than two (2) incorporated municipalities within a district, then the two (2) appointed supervisors shall represent all the municipalities and urban interests in the district, and no municipality shall have more than one (1) appointed supervisor residing therein.

The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. *An elected* supervisor shall hold office until his successor has been elected and has qualified. Any vacancy occurring in the office of *an elected* supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one (1) or more supervisors, or to

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one (1) or more agents or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state conservation commission, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as may be required in the performance of its duties under this act.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state conservation commission upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county."

Approved: February, 25, 1973.

CHAPTER NO. 59

An Act Amending Section 82-2210, R.C.M. 1947, to Delete Reference to Side Noting and Branding of Session Laws; Repealing Section 82-2204, R.C.M. 1947; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82-2210, R.C.M. 1947, is amended to read as follows:

"82-2210. **Publication of laws—index.** The secretary of state, in pursuance of subdivision 9 of section 82-2202, shall cause such laws as are therein specified, except resolution, memorials, and bills appropriating money, to be printed with the heading of each law,

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numbered from 1 upward, using Arabic numerals for such numbering, and he shall omit from the laws the statement "Senate Bill No. ....." and "House Bill No. ....." and hereafter reference to the laws of any

legislative session may be made as follows: "Chapter ..... (giving number) of the laws of ....." (giving the year in which same was enacted). Such laws shall be published in their numerical order, from 1 upward, as same have been filed in *the office of the secretary of state*, and the chapter number shall appear as part of each page heading; provided, that resolutions, memorials, and bills appropriating money shall be printed in the latter part of the volume containing the said laws, in the form and manner heretofore practiced in publishing such laws; and provided further, in all enrolled bills containing amendments to existing statutes, the new parts having been designated by underlining, shall be printed in italics. The secretary of state shall also have prepared and published with said laws, and bound in the same volume, a suitable index of the same, and an additional index showing what sections of the several codes of this state have been amended, repealed, altered, or changed by any of the laws published in that volume, which shall be known and designated as the "Code Index." "

Section 2. Section 82-2204, R.C.M. 1947, is repealed.

Section 3. This act is effective on its passage and approval.

Approved: February 25, 1973.

CHAPTER NO. 60

An Act Amending Section 11-1814, R.C.M. 1947, Providing that Every Police Officer Shall Meet the Minimum Qualifying Standards for Employment Promulgated by the Board of Crime Control Before Employment.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-1814, R.C.M. 1947, is amended to read as follows:

"11-1814. **Qualifications of policemen.** The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty (20) years of age nor more than forty years of age, provided, however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five years, or who shall have served continuously as a police officer for a period of not less than twenty-five years, or who shall have become incapacitated to perform the duties of his office by reason of injury or accident sustained while actually engaged in the performance of his duties as an officer.

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In every case a police officer must be a citizen of the United States, *and meet the minimum qualifying standards for employment promulgated by the board of crime control.''*

Approved: February 25, 1973.

CHAPTER NO. 61

An Act Amending Section 82A-1207, R.C.M. 1947, by Providing That the Board of Crime Control Shall Have the Authority to Establish Minimum Qualifying Standards for Employment of Peace Officers, Require Basic Training for such Officers, Establish Minimum Standards for Equipment and Procedures and for Advanced In-service Training for such Officers and Establish Minimum Standards for any Law Enforcement Training Schools Administered by the State or any of its Political Subdivisions or Agencies; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82A-1207, R.C.M. 1947, is amended to read as follows:

"82A-1207. **Board of crime control — creation — continued — — transfer — composition.** (1) The administratively created agency known as the governor's crime control commission is hereby created by law as the board of crime control, and its functions are continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(3) The board is composed of sixteen (16) members appointed by the governor. The board shall be representative of state and local law-enforcement agencies and units of general local government.

(4) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, the board shall perform the functions assigned to it under that act. *The board shall have the authority to establish minimum qualifying standards for employment of peace officers, require basic training for such officers, establish minimum standards for equipment and procedures and for advanced in-service training for such officers and establish mininum standards for any law enforcement training schools administered by the state or any of its political sub-*

divisions or agencies, to insure the public health, welfare and safety. The board shall waive the minimum qualification standard for good cause shown.

(5) The members of the governor's crime control commission before the effective date of this chapter continue as members of the board of crime control for the remainder of the governor's term; thereafter members shall be appointed in accordance with section 82A-112(1)(b) of this act.

(6) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act, but section 82A-112(2)(b) does not apply."

Section 2. This act is effective on its passage and approval.

Approved: February 25, 1973.

CHAPTER NO. 62

An Act Amending Section 16-3705, R.C.M. 1947, Providing that no Person Shall Be Appointed a Special Deputy Sheriff, Marshal, or Policeman Who Does Not Meet the Minimum Qualifying Standards for Employment Promulgated by the Board of Crime Control.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-3705, R.C.M. 1947, is amended to read as follows:

"16-3705. **Qualifications of deputy sheriffs, marshals and policemen.** **(1)** No sheriff of a county, mayor of a city, or other persons authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance, shall hereafter appoint as such special deputies, marshals, or policemen any person who shall not have resided continuously in this state for a period of one year at least, and in the county where such appointment is made for the period of least six (6) months prior to the date of said appointment, *and who does not meet the minimum qualifying standards for employment promulgated by the board of crime control*; provided, that the provisions of this section shall not apply in cases of such officers summoning a posse forthwith to quell public disturbance or domestic violence. And provided further, that the person or body authorized by law to appoint special deputies, marshals, or policemen may, in its discretion, waive residency requirements.

(2) No sheriff shall employ as a deputy any individual who does not possess all the following qualifications:

(a) graduate of an accredited high school or the equivalent thereof;

(b) good moral character;

(c) never been convicted of a felony;

(d) has not within five (5) years immediately preceding his date of employment been affiliated in any manner with a subversive organization;

(e) been examined by a physician licensed to practice in the state of Montana within thirty (30) days immediately preceding his date of employment and has been prounced in good physical condition.

Subsection (2) of this section shall not be applicable to any deputy sheriff whose term of employment commenced prior to the effective date of this act.

(3) Any person whose term of employment as a deputy sheriff commences subsequent to the effective date of this act shall serve a one-year probationary period and that during this one-year period the employment of any such deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of this act.

(4) It shall be the duty of the sheriff to cause all deputies whose term of employment commenced subsequent to the effective date of this act to attend that academy provided for by chapter 52, Title 75, R.C.M. 1947, except that the sheriff may accept reasonable delays in attendance at the academy as shown by the deputy's declared intention of attending. Failure to satisfactorily complete the course offered by said academy shall be deemed cause to terminate a deputy's employment.

(5) Any deputy sheriff now employed or that may hereafter be employed shall continue in service until relieved of his employment in the manner hereinafter provided and only for one or more of the following specified causes:

(a) conviction of a felony subsequent to the commencement of such employment;

(b) willful disobedience of an order or orders given by the sheriff;

(c) drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;

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(d) sleeping while on duty;

(e) incapacity materially affecting ability to perform official duties;

(f) gross inefficiency in the performance of official duties;

(g) participation in any political campaign as a candidate or the solicitation of political support for any candidate for public office.

(6) When a sheriff terminates the employment of a deputy he shall at the time of termination cause to be served upon said deputy a statement in writing subscribed and sworn to by the sheriff setting forth the cause or causes for the discharge or termination of the deputy's employment.

(7) Any deputy sheriff whose employment is terminated from and after the effective date of this act, may within thirty (30) days from the date of the termination of his employment make application to the district court of the county wherein the deputy was employed for a hearing before the court, with or without jury, on the charges resulting in the deputy's termination of employment or discharge. In the event that a deputy prevails at the hearing he shall be entitled to be reinstated as a deputy sheriff at the same salary he received prior to his discharge or termination of employment and he shall also be entitled to any rights that might have accrued to his benefit prior to his discharge or termination of employment, including that salary which he would have received but for the termination."

Approved: February 25, 1973.

CHAPTER NO. 63

An Act to Provide Procedures for Gubernatorial Return of a Bill to the Legislature after Adjournment to Comply with Article VI, Section 10(4) of the 1972 Montana Constitution; Amending Section 43-504, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 43-504, R.C.M. 1947, is amended to read as follows:

"43-504. **Return, when** *legislature* **not in session.** *(1)* If, on the day the governor desires to return a bill without his approval, and with his objections thereto, to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, secretary, clerk, or any member of such house, and such delivery

is as effectual as though returned in open session, if the governor, on the first day the house is again in session, by message, notifies it of such delivery, and of the time when and the person to whom such delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill he shall return the bill with his reasons for the veto to the secretary of state. The secretary of state shall immediately mail a copy of the bill and the veto message to each member of the legislature.

(3) The legislature may reconvene to reconsider any bill so vetoed by using the statutory procedure provided for convening in special session."

Approved: February 25, 1973.

CHAPTER NO. 64

An Act to Extend the Powers of Initiative and Referendum to Montana Counties; Implementing Article XI, Section 8 of the Montana Constitution of 1972.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. (1) Resolutions may be proposed by the legal voters of any county in this state, in the manner provided in this act. Fifteen percent (15%) of the legal voters of any county may propose to the board of county commissioners a resolution on a subject within the legislative jurisdiction and powers of such county commissioners, or a resolution amending or repealing any prior resolution or resolutions. Petitions shall be filed with the county clerk. The county clerk shall present the same to the board at its first meeting next following the filing of the petition. The board may, within sixty (60) days after the presentation of the petition to the board, adopt the resolution as set forth in the petition. If the resolution proposed by the petition is passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission is filed under the provisions of this act.

(2) If the board does not, within sixty (60) days, pass the resolution proposed in the petition, then the resolution proposed by the petition shall be submitted to the people. Before submitting such resolution to the people, the board may direct that a suit be brought in the district court in and for the county to determine whether the petition and ordinance are regular in form, and whether the ordinance so proposed would be valid and constitutional. The

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procedure for judicial review shall be the same as that provided for the cities in section 11-1104 (4) and (5).

(3) If a resolution is repealed pursuant to a proposal initiated by the qualified electors of a county as provided in this act, the board of commissioners may not, within a period of two (2) years thereafter, reenact such resolution or any resolution so similar thereto as not to be materially different therefrom. If during such two (2) year period the board enacts a resolution similar to the one repealed pursuant to initiative of the voters, a suit may be brought to determine whether the new resolution is a reenactment without material change of the one so repealed. The same procedures set forth for cities shall apply to such suit and determination of the issues arising thereon. Nothing herein contained shall prevent exercise of the initiative herein provided for, at any time, to procure a reenactment of a resolution repealed pursuant to initiative of the voters.

Section 2. Any resolution proposed by petition which is entitled to be submitted to the people, shall be voted on at the next regular election to be held in the county, unless the petition asks that the same be submitted at a special election, and such petition is signed by not less than fifteen percent (15%) of the electors qualified to vote at the last preceding county election.

Section 3. No resolution passed by the board of county commissioners shall become effective until thirty (30) days after its passage, except general appropriation resolutions providing for the ordinary and current expenses of the county, excepting also emergency measures, and in the case of emergency measures the emergency must be expressed in the preamble or in the body of the measure, and the measure must receive a two-thirds (⅔) vote of all the members of the board. Emergency resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety.

Section 4. During the thirty (30) days following the passage of any resolution, ten percent (10%) of the qualified electors of the county may, by petition addressed to the board and filed with the county clerk, demand that such resolution, or any part or parts thereof, shall be submitted to the electors of the county.

Section 5. Any measure on which a referendum is demanded under the provisions of this act shall be submitted to the electors of the county at the next county election provided the petition or petitions were filed with the county clerk at least thirty (30) days before such election. If such petition or petitions be signed by not less than fifteen percent (15%) of the qualified electors of

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the county, the measure shall be submitted at a special election to be held for the purpose.

Section 6. The board of county commissioners may in any case order a special election on a measure proposed by the initiative, or when a referendum is demanded, or upon any resolution passed by the board and may likewise submit to the electors, at a general election, any resolution passed by the board.

Section 7. Whenever a measure is ready for submission to the electors, the clerk of the county shall, in writing, notify the board, who shall issue a proclamation setting forth the measure and the date of the election. Said proclamation shall be published one (1) day each week for four (4) consecutive weeks in each daily newspaper in the county, if there be such, otherwise in the weekly newspaper published in the county. In case there is no weekly newspaper published, the proclamation and the measure shall be posted conspicuously throughout the county.

Section 8. The question to be balloted upon by the electors shall be printed on the initiative or referendum ballot, and the form shall be that prescribed by law for questions submitted at state elections. The referendum or initiative ballots shall be counted, canvassed, and returned by the regular board of judges, clerks, and officers, as votes for candidates for office are counted, canvassed, and returned. The returns for the questions submitted by the voters of the county shall be on separate sheets, and returned to the county clerk. The returns shall be canvassed in the same manner as the returns of regular elections for county and federal officers. The board shall issue a proclamation, as soon as the result of the final canvass is known, giving the whole number of votes cast in the county for and against such measure, and it shall be published in like manner as other proclamations herein provided for. A measure accepted by the electors shall take effect five (5) days after the vote is officially announced.

Section 9. The qualifications for voting on questions submitted to the electors are the same as those required for voting for county commissioners.

Section 10. The provisions of this act regarding the referendum shall not apply to resolutions which are required by any other law of the state to be submitted to the voters or the electors or taxpayers of any county.

Section 11. The form of petitions and the proceedings under this act shall conform as nearly as possible, with the necessary changes as to details, to the provisions of the laws of the state

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relating to the initiative and referendum, and be regulated by such laws, except as otherwise provided in this act.

Approved: February 25, 1973.

CHAPTER NO. 65

An Act to Create the Office of Consumer Counsel to Comply with Article XIII, Section 2 of the 1972 Montana Constitution.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **Title and purpose of act.** This act shall be known and may be cited as "The Consumer Counsel Act."

Section 2. **As used in this act:**

(1) "Committee" means the legislative consumer committee.

(2) "Commission" means the public service commission created in section 70-101, R.C.M. 1947.

(3) "Regulated companies" means all those organizations, corporations, associations, or other public or private entities which now are or may hereafter become subject to regulation in any manner by the department of public service regulation or the public service commission or any successor agency.

Section 3. (1) There is a legislative consumer committee consisting of two (2) members of the senate and two (2) members of the house of representatives.

(2) Members of the first committee shall be appointed within fifteen (15) days after the passage and approval of this act, in the same manner as standing committees of the respective houses are appointed. Subsequent members shall be appointed in the same manner before the sixtieth legislative day of the legislative session following the expiration of the terms of the members of the committee.

(3) Any person who is an employee, agent, officer, partner, or director of any regulated company, or who has served a regulated company in any capacity within the three (3) years previous to his appointment may not be a member of the committee.

(4) A vacancy on the committee occuring when the legislature is not in session shall be filled by the selection of a legislator by the remaining members of the committee.

(5) No more than one (1) of the appointees of each house may be members of the same political party.

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(6) A member shall serve until his term of office as a legislator ends and until his successor is appointed.

(7) The committee shall elect one (1) of its members as chairman and such other officers as it determines necessary.

Section 4. The committee shall meet once each quarter to advise and consult with the consumer counsel. Committee members shall be reimbursed from the appropriation to the office of the consumer counsel for their actual and necessary expenses incurred and and additional sum equal to a legislator's pay while attending such quarterly meetings.

Section 5. The committee shall appoint a consumer counsel and set his salary. The consumer counsel shall have the following minimum qualifications and such additional qualifications as the committee determines appropriate:

(1) a bachelor's degree or equivalent from an accredited college or university with a major or minor in accounting or allied fields.

(2) be admitted to practice law in Montana courts and in the United States district court for the state of Montana.

Section 6. The consumer counsel may, with the approval of the committee, appoint employees and consultants necessary to carry out the provisions of this act, within the limits of legislative appropriation.

Section 7. **The consumer counsel:**

(1) shall appear at all public hearings conducted by the commission, as the representative of the consuming public, on all matters which come before the commission which in any way affect the consuming public, and shall have all the rights and powers of any party in interest appearing before the commission regarding examination and cross-examination of witnesses, presentation of evidence and other matters;

(2) may institute proceedings before the commission against regulated companies;

(3) has all the investigatory powers necessary to perform his duties as provided herein which may be granted and promulgated by the committee in accordance with the provisions of the Montana Administrative Procedure Act;

(4) may examine in any commission proceedings under oath any officer, director, manager, or employee of any regulated company and inspect the business and corporate records of any regu-

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lated company in accordance with the law to aid in the exercise of his duties;

(5) may institute appropriate action in the state and federal courts in the name of the consuming public of the state of Montana for review of decisions rendered by the commission;

(6) shall meet and confer with members or representatives of the consuming public at such times and places as he determines appropriate;

(7) shall prepare and submit a yearly report and such other interim reports he determines advisable concerning his activities during the year and may recommend appropriate remedial legislation to the committee;

(8) has such other powers necessary to fully represent the interests of the consuming public before the commission as may be granted and promulgated by the committee in accordance with the provisions of the Montana Administrative Procedure Act.

Section 8. If any person is requested to appear with or without his records as a witness before the commission or to be examined under the provisions of this act, the consumer counsel or his delegate may apply to the clerk of court of the first judicial district of Montana or any judicial district for a subpoena commanding the appearance of the witness and his records if requested. It is the duty of the clerk to issue the subpoena and the duty of any peace officer to serve the same. Disobedience of a subpoena issued under the provisions of this act is contempt of court and shall be punished accordingly.

Section 9. (1) There is an account in the earmarked revenue fund to which all fees collected hereunder shall be deposited and from which all appropriations to the office of the consumer counsel shall be paid.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within 90 days after the close of each calendar quarter, file with the department of public service regulation and the department of revenue a statement in such form as the commission may determine, showing the gross operating revenue from all activities regulated by the commission within the state for that calendar quarter of operation or portion thereof, and shall at that time pay to the department of revenue a fee based on a fraction of the gross operating revenue reported, as determined by the department of revenue under subsection (3) of this section.

(3) Within thirty (30) days following enactment of the legislative appropriation for the office of the consumer counsel, the de-

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partment of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies, for the previous fiscal year,

(b) compute the percentage of the amount determined in subsection (3)(a) which will produce an amount equal to the appropriation to the consumer counsel for each year of the appropriation, and

(c) give notice by mail to each regulated company of the percentage determined in subsection (3)(a) to be applied to the gross operating revenue reported under subsection (2) above, to determine the amout of the fee to be paid in each year of the appropriation.

(4) In the event the fee charged in any one (1) year of the biennium is in excess of the amount actually expended in that year, the excess shall be deducted from the amount required for the first year of the next biennial appropriation before the determination for that year required by subsection (3)(a) of this act is made.

(5) Any regulated company, or any officer or employee of any regulated company, who, with intent to evade any fee or any requirement of this act or any lawful requirement of the commission thereunder, fails to pay the fee, or to make, render, sign or verify any statement, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars ($1,000), to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars ($1,000) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

(6) The certificate of the department of revenue to the effect that a fee has not been paid, that a report has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such fee has not been paid, that such statement has not been filed, or that such information has not been supplied.

Section 10. **Servability.** It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved: February 25, 1973.

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CHAPTER NO. 66

An Act to Create the Montana Salary Commission, to Comply with Article XIII, Section 3 of the 1972 Montana Constitution and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. (1) There is created a Montana salary commission. The commission is composed of eight (8) members, none of whom may be public officers, either elected or appointed. The commission shall be appointed in the following manner and in the following chronological order:

(a) First, the governor shall appoint one (1) member from each of the two (2) major political parties, equally divided between the United States congressional districts;

(b) Next, the supreme court shall appoint one (1) member from each of the two (2) major political parties, equally divided between the United States congressional districts;

(c) Next, the majority floor leader of the senate shall appoint one (1) member from his political party. The minority leader of the senate shall then appoint one (1) member from his political party not from the same United States congressional district as the member appointed by the presiding officer;

(d) Next, the presiding speaker of the house of representatives shall appoint one (1) member from his political party. Lastly, the minority leader in the house of representatives shall appoint one (1) member from his political party not from the same United States congressional district as the member appointed by the speaker.

All appointments shall be made not later than the 60th legislative day.

(2) Commission members shall serve a term of four (4) years, provided that one-half (½) of the membership of the first salary commission shall serve a term of two (2) years, and the committee members shall draw lots at their first meeting to determine which of their number will serve two (2) year terms. In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

Section 2. (1) The initial meeting of the commission shall be held on the second Tuesday of July in the year in which the commission is created.

(2) The commission shall hold at least two (2) meetings before any legislative session which may consider appropriations for

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compensation including salaries and expenses of the judiciary and elective members of the legislative and executive branches.

(3) All subsequent meetings shall be called by the chairman of the commission, and notice of the meeting dates shall be given by mail to each commission member at least twenty (20) days before the day scheduled for the meeting.

(4) A majority of members present at any meeting is sufficient to transact any business to come before the meeting; however, a majority of all commission members is necessary to ratify the commission's recommendations to the legislature.

(5) Commission members shall be reimbursed from the appropriation to the office of the legislative council for their actual and necessary expenses incurred, and twenty-five dollars ($25) per day while attending meetings of the commission.

(6) The commission shall choose one (1) of its members as chairman at its initial meeting, and the executive director of the legislative council or his delegate shall serve as secretary to the commission and shall record and transcribe all minutes of commission meetings and prepare all correspondence, notices, and formal recommendations as directed by the chairman.

Section 3. The commission may request comprehensive reports or studies from any state agency concerning compensation of the judiciary and elective members of the legislative and executive branches of government. Any state agency from which such a report is requested shall furnish the same within a reasonable time as determined by the chairman and the head of the agency concerned. The report or study requested, in addition to such other matters as the commission may request, or the agency preparing the report may determine appropriate, shall contain a review and comparison of the levels and form of compensation paid to the judiciary and elective members of the legislative and executive branches with the levels and forms of compensation paid in other states similarly situated.

Section 4. On or before November 15 prior to the year in which the legislature may consider appropriations for compensation of members of the judiciary and elective members of the legislative and executive branches, the commission shall submit its formal written recommendations for the level and form of compensation to be paid to the judiciary and the elective members of the legislative and executive branches to each member of the legislative assembly, to each member of the judiciary, and each elective member of the executive branch, for review and consideration. A commission member who does not concur in the proposed recommenda-

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tion may submit his written objections thereto with the formal recommendations submitted by the commission.

Section 5. This act is effective on its passage and approval.

Approved: February 25, 1973.

CHAPTER NO. 67

An Act Adding the Auditor to the State Board of Land Commissioners to Implement Article X, Section 4, of the 1972 Montana Constitution; Amending Sections 81-103 and 82-904, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 81-103, R.C.M. 1947, is amended to read as follows:

"81-103. **Powers and duties of state board of land commissioners.** The state board of land commissioners, consisting of the governor, superintendent of public instruction, *auditor,* secretary of state and attorney general, as provided by the constitution, shall be the governing board of the department of state lands and investments; it shall have and exercise general authority, direction and control over the care, management and disposition of all state lands and the funds arising from the leasing, use, sale and disposition of such lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle shall be that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well-being of the people of this state; and that it is the duty of the board so to administer this trust as to secure the largest measure of legitimate and reasonable advantage to the state. It is the duty of the board to manage these lands under the multiple-use management concept defined as: The management of all the various resources of the state-owned lands so that they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources, and harmonious and co-ordinated management of the various resources, each with the other, without inpairment of the productivity of the land, with consideration being given to the relative values of the various resources. The enumeration in this act of specific powers conferred upon the board shall not be so construed as to deprive the board of other powers

not enumerated but inherent in the general and discretionary powers conferred by the constitution, and necessary for the proper discharge of its duties; but there can be no such implied powers inconsistent with any part of the constitution, nor shall any inherent powers be assumed to exist which would be inconsistent with any statutory provision or with the general rule and principle herein stated."

Section 2. Section 82-904, R.C.M. 1947, is amended to read as follows:

"82-904. **Board of land commissioners.** The governor, superintendent of public instruction, *auditor,* secretary of state, and attorney general constitute the state board of land commissioners."

Approved: February 25, 1973.

CHAPTER NO. 68

An Act Amending Section 16-1719, R.C.M. 1947, to Require Weed Control on Municipal Streets and Property.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-1719, R.C.M. 1947, is amended to read as follows:

"16-1719. **County supervisors to control weeds and to exterminate weed seed on public highways and county-owned lands in the district.** It shall be the duty of the supervisors to control noxious weeds on the highways and county owned land *and on public streets, alleys and municipally owned land* within the confines of the district. The total cost of such control shall be paid from the "noxious weed fund." Provided that the cost of controlling such weeds growing along the right of way of a state or federal highway shall upon the presentation by the supervisors of a verified account of the expenses incurred, be paid from the state highway fund."

Approved: February 25, 1973.

CHAPTER NO. 69

An Act Amending Section 75-5933, R.C.M. 1947; Providing that "Duties of Trustees" May Require Immunizations as a Prerequisite for School Entrance.

Be it enacted by the Legislative Assembly of the State of Montana:

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Section 1. Section 75-5933, R.C.M. 1947, is amended to read as follows:

"75-5933. **Powers and duties.** As prescribed elsewhere in this Title, the trustees of each district shall have the power and it shall be its duty to perform the following duties or acts:

(1) employ or dismiss a teacher, principal or district superintendent in accordance with the provisions of the school personnel chapter of this Title;

(2) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this Title;

(3) call, conduct and certify the elections of the district in accordance with the provisions of the school election chapter of this Title;

(4) participate in the teachers retirement system of the state of Montana in accordance with the provisions of the teachers retirement system chapter of this Title;

(5) participate in district boundary change actions in accordance with the provisions of the districts chapter of this Title;

(6) organize, open, close or acquire isolation status for the schools of the district in accordance with the provisions of the school organization chapter of this Title;

(7) adopt and administer the annual budget or an emergency budget of the district in accordance with the provisions of the school budget system chapter of this Title;

(8) conduct the fiscal business of the district in accordance with the provisions of the school financial administration chapter of this Title;

(9) establish the ANB, foundation program, permissive levy, additional levy, cash reserve and state impact aid amount for the general fund of the district in accordance with the provisions of the general fund chapter of this Title;

(10) establish, maintain, budget and finance the transportation program of the district in accordance with the provisions of the transportation chapter of this Title;

(11) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds chapter of this Title;

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(12) when applicable, establish, financially administer and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, post-secondary vocational-technical center fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, housing and dormitory fund, traffic education fund and interlocal co-operative agreement fund in accordance with the provisions of the other school funds chapter of this Title;

(13) when applicable, administer any interlocal co-operative agreement, gifts, legacies or devises in accordance with the provisions of the miscellaneous financial chapter of this Title;

(14) hold in trust, acquire and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities chapter of this Title;

(15) operate the schools of the district in accordance with the provisions of the school calendar chapter of this Title;

(16) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education and special education chapters of this Title;

(17) establish and maintain the school food services of the district in accordance with the provisions of the school food services chapter of this Title;

(18) perform any other duty and enforce any other requirements for the government of the schools prescribed by this Title, the policies of the board of education or the rules and regulations of the superintendent of public instruction*; and*

(19) may require that all children at the time they are first enrolled in school, or within a reasonable time thereafter, be successfully immunized against those communicable diseases, as recommended by the state department of health and environmental sciences.

The immunizations required and the manner and frequency of their administration shall conform to recognized standards of medical practice and shall be set by the state department of health and environmental sciences.

A child may be exempted from this requirement upon certification from a licensed physician stating that the physical condition of the child is such that the immunization would seriously endanger his life or health, or a written statement signed by one (1) parent or guardian that he is an adherent of a religious denomination whose religious teachings are opposed to the immunization."

Approved: February 25, 1973.

CHAPTER NO. 70

An Act Amending Sections 3-233 and 3-2917, R.C.M. 1947, to Provide for Deposit of Fees for Testing of Grain with the Department of Agriculture.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 3-233,R.C.M. 1947, is amended to read as follows:

"3-233. **Fees—disposition.** All fees and other charges *fixed* by the *department including fees* for the inspection, grading, weighing and protein-testing of grain, shall be kept as near the actual cost of such services as possible. All *those* fees and charges shall be paid to the *department* and deposited with the state treasurer. The state treasurer shall place all *the* fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay all claims for expense incurred in inspecting, grading, weighing and protein-testing of grain, when such claims have been approved as provided by law. No funds of the state shall be used by the *department* in carrying out such services, except moneys presently appropriated."

Section 2. Section 3-2917, R.C.M. 1947, is amended to read as follows:

"3-2917. **Research and marketing revolving account—sources—use—expenditures.** (1) There *shall be* an account in the *federal and private revenue* fund known as the wheat research and marketing account. There shall be placed in the account:

(a) the proceeds of all millage levies made, paid and collected under this act, and

(b) the proceeds from all gifts, grants or donations to the department of agriculture for the use of the researches conducted by the division of wheat research and marketing.

(2) The account shall be maintained for the use of the wheat research and marketing division of the department of agriculture and shall be separate and apart from all other accounts of the department.

(3) There shall be paid out of this account claims for expenditures under this act as are approved by the commissioner of agriculture and the state controller."

Approved: February 25, 1973.

CHAPTER NO. 71

An Act to Amend Sections 3-2308 and 3-2315, R.C.M. 1947, Eliminating the Use and Sale of the Montana Egg Seal; and Repealing

Sections 3-2307 and 3-2312, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 3-2308, R.C.M. 1947, is amended to read as follows:

"3-2308. **Notice to purchaser of grade of eggs.** It shall be unlawful for any person to sell, offer or expose for sale at wholesale or retail any eggs for human consumption, without notifying the person or persons purchasing or intending to purchase the same, of the exact grade or quality and size or weight of such eggs, according to the standards prescribed by the *department of livestock*, by stamping or printing on the container of any such eggs, such grade or quality and size or weight, and in the case said eggs are offered for sale in bulk, without also displaying in a conspicuous place at the point where such eggs are offered or exposed for sale, a placard or sign printed in letters two (2) inches high, giving such grade, quality, size and weight and date of grading. Provided, that this act shall not affect the sale of eggs by the producers when the consumer purchased said eggs at the place of production."

Section 2. Section 3-2315, R.C.M. 1947, is amended to read as follows:

"3-2315. **Disposal of license fees.** All funds derived from the licenses herein provided shall be paid to the state treasurer *to be* credited to the general fund."

Section 3. Section 3-237 and 3-2312, R.C.M. 1947, are repealed.

Approved: February 25, 1973.

CHAPTER NO. 72

An Act to Amend Section 43-310, R.C.M. 1947, to Implement Article V, Sections 5 and 6 of the 1972 Montana Constitution by Providing that Legislators be Compensated for Each Legislative Day, Receive expenses of Thirty-three Dollars ($33) Per Day Seven (7) Days a Week, Except During Recesses, and Receive Mileage, Expenses and Twenty Dollars ($20) Per Day For Attending Legislative Standing Committee Meetings and Mileage for the Pre-session Caucus, Raising Mileage from Nine Cents (9¢) to Twelve Cents (12¢); and Providing for an Immediate Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 43-310, R.C.M. 1947, is amended to read as follows:

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"43-310. **Per diem, mileage and expenses of members.** (1) *Legislators are entitled to compensation of* twenty dollars ($20) per *legislative* day, payable weekly, during *a* session of the *legislature,* and *twelve* cents *(12¢)* per mile for each mile of travel to and from their residences and the place of holding the session, by the *shortest regularly traveled automobile* route.

(2) Members *are also entitled to thirty-three dollars ($33)* per day, *seven (7) days a week* payable weekly during *a legislative* session, as reimbursement for expenses incurred in attending the session. *Expense payments shall stop when the legislature recesses for more than three (3) days and shall resume when the legislature reconvenes.*

(3) *While going to, attending, and returning from legislative standing committee meetings and necessary committee business authorized by the chairman of the legislative council during the legislative interim, legislators are entitled to:*

(a) a mileage allowance of twelve cents (12¢) per mile for each mile of travel,

(b) actual expenses, and

(c) compensation of twenty dollars ($20) per day.

(4) Legislators are also entitled to a mileage allowance of twelve cents (12¢) per mile for travel to and from their respective presession caucus meeting."

Section 2. The rates of per diem, mileage and expenses provided for in this act shall be applicable from and after January 1, 1973.

Section 3. This act is effective upon passage and approval.

Approved: February 27, 1973.

CHAPTER NO. 73

An Act to Clarify the Executive Clemency Laws to Comply with Article VI, Section 12 of the 1972 Montana Constitution; Amending Sections 94-9823, 94-9841 and 94-9842, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 94-9823, R.C.M. 1947, is amended to read as follows:

"94-9823. **Definitions.** When used in this act, unless the con text otherwise requires:

(a) "Probation" is the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the board upon direction of the court.

(b) "Parole" is the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to its supervision.

(c) "Executive clemency" refers to the powers of the governor as provided by section *12* of article *VI* of the constitution of the state of Montana."

Section 2. Section 94-9841, R.C.M. 1947, is amended to read as follows:

"94-9841. **Cases of executive clemency.** The board shall investigate and report to the governor with respect to all cases of *executive clemency*. A majority of the board shall advise, investigate, and approve each such case before the action of the governor shall be final. All applications for executive clemency shall be made to the board, which shall cause an investigation to be made of all the circumstances surrounding the crime for which the applicant was convicted, and as to the individual circumstances relating to social conditions of the applicant. If the board, or a majority thereof, approves such application for executive clemency, it shall advise the governor and recommend action to be taken."

Section 3. Section 94-9842, R.C.M. 1947, is amended to read as follows:

"94-9842. **Notice of hearing applications for executive clemency.** After the board has duly considered an application for executive clemency, and has by majority vote favored a recommendation of executive clemency to the governor, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for Executive Clemency concerning .....,
a convict confined in the State Prison (or to one .....,
who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of .....
committed at ....., in the County of
....., State of Montana, on the ..... day of
....., 19 ....., and sentenced for a term of ..... years.

"Therefore, be it ordered that ..... the ..... day of.....,
19....., be set apart for the consideration of said Executive Clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon *or reprieve*,

commutation, restoration of citizenship, remission or suspension of fine or forfeiture are hereby notified to be present at ..... o'clock of said day at .....

"Further, ordered that a copy of this order be printed and published in the ..... (here insert name of some newspaper of general circulation in the county where the crime was committed) a daily (or weekly) newspaper printed and published at ..... in the county of ....., once each week for two weeks beginning, ..., 19....., and ending ....." ''

Approved March 3, 1973.

CHAPTER NO. 74

An Act Providing That Disability Insurance Policies and Plans Covering Members of the Insured's Family as Well as the Insured Shall Grant Immediate Accident and Sickness Coverage, from and after the Moment of Birth, to Each Newborn Infant of any Insured; and Amending Sections 40-4002, 40-4101 and 40-4102.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 40-4002, R.C.M. 1947, is amended to read as follows:

"40-4002. **Scope, format of policy.** No policy of disability insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code, and complies with the following:

(1) The entire money and other considerations therefor shall be expressed therein;

(2) The time when the insurance takes effect and terminates shall be expressed therein;

(3) It shall purport to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family, who shall be deemed the policyholder, any two (2) or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder;

(4) No policy or certificate of insurance, which in addition to covering the insured, also covers members of the insured's family, may be issued or amended in this state if it contains any disclaimer,

waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth;

(5) The style, arrangement and over-all appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten (10) point with a lower case unspaced alphabet length not less than one hundred and twenty (120) point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy the brief description, if any, and captions and subcaptions);

(6) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in sections 40-4004 to 40-4026, inclusive, of this chapter, shall be printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and Reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies;

(7) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof;

(8) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner."

Section 2. There is a new section to be numbered 40-4002.1, R.C.M. 1947, which reads as follows:

40-4002.1. Each policy of disability insurance or certificate issued thereunder, which in addition to covering the insured, also covers members of the insured's family shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

Section 3. Section 40-4101, R.C.M. 1947, is amended to read as follows:

"40-4101. **"Group disability insurance" defined—eligible groups.** Group disability insurance is hereby declared to be that

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form of disability insurance covering groups of persons as defined below, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of such groups of persons, and issued upon the following basis:

(1) Under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer. The term "employees" as used herein shall be deemed to include the officers, managers, and employees of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners and employees of individuals and firms, if the business of the employer and such individual or firm is under control through stock ownership, contract, or otherwise. The term "employees" as used herein may include retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(2) Under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring members, employees, or employees of members of the association for the benefit of persons other than the association or its officers or trustees. The term "employees" as used herein may include retired employees.

(3) Under a policy issued to the trustees of a fund established by two (2) or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in subdivision (2) above, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or of such association, or employees of members of such association, for the benefit of persons other than the employers or the unions or such association. The term "employees" as used herein may include the officers, managers and employees of the employer, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used herein may include retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

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(4) Under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy.

(5) Under a policy issued to cover any other substantially similar group which, in the discretion of the commissioner, may be subject to the issuance of a group disability policy or contract.

(6) Any group disability policy which contains provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, nursing, medical, or surgical services for members of the family or dependents of a person in the insured group may provide for the continuation of such benefit provisions, or any part or parts thereof, after the death of the person in the insured group.

(7) No group disability policy or certificate of insurance, which, in addition to covering persons in the insured group, also covers members of such person's family, may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of persons in the insured group from and after the moment of birth."

Section 4. Section 40-4102, R.C.M. 1947, is amended to read as follows:

"40-4102. **Required provisions of group policies.** Each such group disability insurance policy shall contain in substance the following provisions:

(1) A provision that, in the absence of fraud, all statements made by applicants or the policyholder or by an insured person shall be deemed representations and not warranties, and that no statement made for the purpose of effecting insurance shall avoid such insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his beneficiary.

(2) A provision that the insurer will furnish to the policyholder for delivery to each employee or member of the insured group, a statement in summary form of the essential features of the insurance coverage of such employee or member and to whom benefits thereunder are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(3) A provision that to the group originally insured may be added from time to time eligible new employees or members or

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dependents, as the case may be, in accordance with the terms of the policy.

If the policy or certificate issued thereunder, in addition to covering persons in the insured group, also covers members of such person's family, it shall contain an additional provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any person in the insured group."

Section 5. No disability insurance plan or group disability insurance plan issued by a health service corporation, which in addition to covering the persons insured, also covers members of such a person's family, may be issued or amended in this state if it contains any disclaimer, waiver or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of the persons insured from and after the moment of birth. Each such policy shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured person.

Approved: March 3, 1973.

CHAPTER NO. 75

An Act Providing for Interstate Parole and Probation Hearing Procedures, Requiring Notice, Assistance of Counsel, Confrontation of Witnesses Under Certain Conditions, a Hearing Record, and Authorizing Out-of-state Hearings.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Where supervision of a parolee or probationer is being administered pursuant to the interstate compact for the supervision of parolees and probationers, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever, in their view, consideration should be given to retaking or reincareration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this act within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this state shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not

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to exceed fifteen (15) days prior to the hearing and, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow.

Section 2. Any hearing pursuant to this act may be held before the administrator of the interstate compact for the supervision of parolees and probationers, a deputy of such administrator, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

Section 3. With respect to any hearing pursuant to this act, the parolee or probationer:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation.

(2) Shall be permitted to consult with any persons whose assistance he reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

Section 4. In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact for the supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this act, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

Approved: March 3, 1973.

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CHAPTER NO. 76

An Act Amending Section 75-7103, R.C.M. 1947, to Allow a Combination of School Buildings, or More Than One School Bus, to be Considered a Single Purpose Requiring Only a Single School Bond Election Ballot; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7103, R.C.M. 1947, is amended to read as follows:

"75-7103. **Trustees may issue bonds for certain purposes.** The trustees of a school district may issue and negotiate bonds on the credit of the school district for the purpose of:

(1) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, and/or obtaining a water supply *for,* a school, teacherage, dormitory, gymnasium, other building, *or combination of said buildings* for school purposes in the school district;

(2) buying a school bus *or buses*;

(3) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(4) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; or

(5) funding a judgment against the district.

Any money realized from the sale of any bonds issued on the credit of a high school district shall not be used for any of the above purposes in an elementary school district, and such money may be used for any of the above purposes for a junior high school but only to the extent that the ninth grade of the high school is served thereby."

Section 2. This act is effective on its passage and approval.

Approved: March 3, 1973.

CHAPTER NO. 77

An Act Abolishing the Mined Land Reclamation Advisory Committee.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The mined land reclamation advisory committee, provided for in section 50-1021(11), R.C.M. 1947, is abolished.

Approved: March 3, 1973.

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CHAPTER NO. 78

An Act Abolishing the Sanitarian Advisory Council.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The sanitarian advisory council, created in section 69-3402, R.C.M. 1947, is abolished.

Approved: March 3, 1973.

CHAPTER NO. 79

An Act Amending Section 82-1515, R.C.M. 1947, to Provide that the Board of Hail Insurance Appoint a Sufficient Number of Appraisers Each Year to Appraise the Hail Losses in the Various Counties.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82-1515, R.C.M. 1947, is amended to read as follows:

"82-1515. **Appraisers—appointment—qualifications and duties.** The state board of hail insurance shall, as soon as practicable, each year appoint *a sufficient number of appraisers* to appraise all losses by hail incurred under this act in the various counties. The men so appointed shall be actively engaged in farming or shall have had practical experience in farming and shall be selected from names submitted by regularly organized farmers societies in the various counties. If the recommendations are not made as provided above, then the state board shall select the appraisers from men actively engaged in farming or men who have had practical experience in farming as heretofore provided. Provided, further, that the state board of hail insurance may call on one or more of the duly appointed appraisers for the adjustment of each and every loss and the said appraisers shall promptly report their findings to the state board of hail insurance, according to the rules provided by the said state board. Provided, further, that no appraiser who shall be a relative, attorney, agent, employee or creditor or in any manner interested by lien, mortgage or otherwise in the crop injured or destroyed, shall assist in adjusting any such loss. The state board may in case of emergency appoint more than three appraisers in any county. Also it may send any duly appointed appraiser or appraisers into any county as the occasion may require."

Approved: March 3, 1973.

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CHAPTER NO. 80

An Act Relating to Validation of Judicial Sales Prior to January 1, 1973, of Real Property and Curing Defects or Irregularities in the Issuance of Execution, Manner of Making or Conducting the Sale, or in the Recitals of References in Sheriffs' Deeds.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. All judicial sales of real property prior to January 1, 1973, provided no action is now pending to set such sale aside, where made in this state on proceedings to satisfy valid judgments or decrees of any court and the moneys bidden thereon paid to the officer making such sale, shall be valid and sufficient in law to sustain a sheriffs' deed based on such sale, and when no such deed has been executed, shall entitle such purchaser to such deed; and such deed, if now or when executed, shall be sufficient to convey all the title of judgment debtor at the time of such sale in the premises so sold to the purchaser at said sale, and all defects or irregularities in the issuance of execution, or the manner of making or conducting the sale, or in the recitals or references in such deed, shall be disregarded and such sale shall not be invalidated by reason of any such defect or irregularity.

Approved: March 3, 1973.

CHAPTER NO. 81

An Act Validating Deeds and Conveyances in Sales of Land and Personal Property Made by Trustees, Executors, Administrators and Guardians Prior to January 1, 1973, Curing Defects and Irregularities in Such Sales.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to January 1, 1973 were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed or conveyance to such purchaser, and in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or

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defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

Approved: March 3, 1973.

CHAPTER NO. 82

An Act Validating Deeds and Conveyances Made Prior to January 1, 1973, Which are Defective in Execution or Acknowledgement, Providing That Such Instruments Shall Be Conclusive Evidence of Title Against the Grantors.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. All deeds to real property executed prior to January 1, 1973, in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgement or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

Approved: March 3, 1973.

CHAPTER NO. 83

An Act to Amend Section 82-3319, R.C.M. 1947, Regarding the Appointment of Architects and Consulting Engineers.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82-3319, R.C.M. 1947, is amended to read as follows:

"82-3319. **Appointment of architects and consulting engineers.** The state controller shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled or renovated by the state of Montana, its boards, institutions and agencies, *from a list of three (3) architects or consulting engineers proposed by the state board, institution or agency where the work is to be done.* Such appointment shall be subject to the approval of the state board of examiners."

Approved: March 3, 1973.

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CHAPTER NO. 84

An Act Amending Section 21-103, R.C.M. 1947, Providing "Irreconcilable Differences" as an Additional Cause for Divorce; and Providing that the Factual Circumstances Supporting that Cause Need Not Be Pleaded in the Particular."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 21-103, R.C.M. 1947, is amended to read as follows:

"21-103. **Causes for divorce.** Absolute divorces, or separations from bed and board, or decrees for separate maintenance, may be granted for any of the following causes:

1. Incurable insanity;
2. Adultery;
3. Extreme cruelty;
4. Willful desertion;
5. Willful neglect;
6. Habitual intemperance;
7. Conviction of felony;

8. Irreconcilable differences, which have existed and persisted for a period of six months before the commencement of an action and which have caused the irremediable breakdown of the marriage. This cause need not be pleaded in the particular."

Approved: March 3, 1973.

CHAPTER NO. 85

An Act Amending Section 11-2214, R.C.M. 1947, by Providing an Additional Method of Financing of Offstreet Parking Improvement Districts and for Determining the Assessment of Each Parcel Within the District, and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-2214, R.C.M. 1947, is amended to read as follows:

"11-2214. **Methods of payments of improvements.** (1) To defray the cost of the making of any of the improvements provided for in this act, the city council or commission shall adopt one of the

following methods of assessment; unless otherwise provided in subsection 1 (c):

(a) The city council or commission shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided, however, that the city council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersections, out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within twenty-five (25) feet of the line of the street on which the improvement is to be made and all other land within the district, the council or commission may, in the resolution creating any improvement district, provide, that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of land within the district lying within twenty-five (25) feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other within the district shall bear.

(b) The city council or commission shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district, bordering or abutting upon street or streets whereon or wherein the improvement has been made, in proportion to the lineal feet abutting or bordering the same; provided, however, that this method of assessment shall not apply to assessments in improvement districts created under the provisions of section 11-2205 of this code; and provided, further, that the city council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

(c) Where curbs, gutters, alley approaches, streets, crossings and utility service connections are an integral part of the creation of storm sewer districts, sanitary sewer districts or street pavement districts, the city council or commission may assess a portion of the improvements upon the area basis, as set forth under subsection (1) (a); other portions of the improvements upon a lineal feet basis, as set forth under subsection 1 (b); and the utility service connections upon a lump sum based on the bid price in the improvement district con-

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tract and assessed only against the lots, tracts or parcel of land served by the utility connection or connections, all within the same special improvement district, so long as such assessment is equitable.

(d) When the purpose of the assessment is for the establishment and/or improvement of offstreet parking as provided in this act, the city council or commission shall assess against the real property specifically benefited by the offstreet parking facilities, the cost of the developments involved, in proportion to the benefits received by each tract of land within said district. In determining the benefit to be received by each parcel of land, the city council or commission shall consider:

(i) the relative distance of the parking facility from each parcel of land within the area of the special improvement district;

(ii) the relative needs of parking spaces for each parcel of land located within the boundaries of said district, either as established by the city zoning ordinance, if any, or otherwise, with relation to the use of said parcel;

(iii) the assessed value of each parcel within said district;

(iv) the square footage of each parcel within said district as it relates to the whole;

(v) the square footage of floor space in any improvements on the parcel and the various uses of such floor space;

(vi) the availability of existing on-site parking space on any parcel of land within the district. Provided, however, that before any improvement district can be created or financed under the provisions of this section, the city council or commission must, prior to the creation of said district, pass a city ordinance setting forth therein the formula to be used in determining the assessment of each lot or parcel within said district, which said formula must include but shall not be limited to the items to be considered as set forth hereinabove. And provided further that prior to the adoption of any such ordinance by the city council or commission, the city council or commission shall make a determination of the formula for the method of assessment as set forth above, considering all of the factors above set forth, and shall hold a public hearing after due notice and at such hearing all persons concerned may present their objections to the formula or any part of it and point out errors and inequities and submit reasons for amendments and corrections. The council may continue the hearing from time to time. After the council has heard all objections and suggestions, it shall correct any errors which it finds in the formula for assessment as originally made and shall finally establish and settle the formula for assessment in the same manner as any other city ordinance.

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(2) Whenever any portion of the surface of a paved street is occupied or used for railway or street railway purposes, it shall be and continue to be the duty of the owner or operator of such railway or street railway to fully repair any injury or damage to such pavement caused by such railway or street railway either in the operation of its cars or in the laying or repair of its tracks, and in case of a failure or refusal of such owner or operator so to repair such pavement within a reasonable time after notice by the city council or commission, the city council or commission is authorized and empowered to cause such repairs to be made and to assess the cost thereof to such owner or operator and to enforce collection thereof as in the case of taxes.

(3) Whenever any lot, piece or parcel of land belonging to the United States, or mandatory of the government, shall front upon the proposed work or improvement, or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the city from its general fund.

(4) It shall be lawful for the owner or owners of the lots or land fronting upon any street, the width and grade of which shall have been established by the city council or commission, to perform, at his or their own expense (after obtaining permission from the council or commission so to do, but before said council or commission has passed its resolution of intention to order grading exclusive of this), any grading upon said street, to its full width, or to the center line thereof and to its grade as then established, and thereupon to procure, at his or their own expense, a certficate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in such grading, and proportions performed by each owner, and that the same is done to establish width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the city engineer, which certificate the engineer shall record in a book kept for that purpose in his office, properly indexed.

(5) Whenever thereafter the city council or commission orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest shall be entitled to credit, on the assessment upon his or their lots and lands fronting on said street for the grading thereof, to the amount

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of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; provided, however, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the city clerk shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and land owned respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street, and belonging to any such certified owners or their successors in interest.

(6) Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work (excepting grading) on such street, in front of any block, at his or their own expense, and the city council or commission shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; provided, that the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the city engineer at the time said order is passed.''

Section 2. This act is effective on passage and approval.

Approved: March 3, 1973.

CHAPTER NO. 86

An Act Amending Section 11-203, R.C.M. 1947, to Provide That No New City or Town Can Be Incorporated Unless it is More Than Three (3) Miles from Any Existing Incorporated City or Town.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-203, R.C.M. 1947, is amended to read as follows:

"11-203. **Organization of cities and towns—petition and census.** Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than fifty qualified electors, residents of the state, and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated, which petition must describe the limits of the proposed city or town, and of the several wards thereof, which must not exceed one square mile for each five hundred inhabitants resident therein. The petitioners must annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map must be filed in the office of the county clerk. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board of county commissioners, and the same must be filed by it in the county clerk's office. No municipal corporation must be formed unless the number of inhabitants is three hundred or upwards*; and unless the boundary of the proposed territory to be incorporated is more than three (3) miles from the boundary, measured from the nearest point between the two (2), of any presently incorporated city or town or there is presented to the board, appropriate evidence that any presently incorporated city or town within three (3) miles which legally could annex, but has refused to annex the proposed territory.*"

Approved: March 3, 1973.

CHAPTER NO. 87

An Act Transferring the Functions of the Department of Law Enforcement and Public Safety Pertaining to Electrical Inspections and Code Making to the Department of Professional and Occupational Licensing, and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 82A-1607, R.C.M. 1947, which reads as follows:

82A-1607. **Electrical inspections and code making.** The functions of the department of law enforcement and public safety of making inspections of electrical installations and issuing tags and charging fees therefor as set forth in section 66-2805 (c) (i) and of establishing an electrical code as set forth in section 66-2802(i), which were transferred to the department in section 82A-1203, are trans-

ferred to the department of professional and occupational licensing and the board of electricians, subject to the provisions of this act.

Section 2. This act is effective on its passage and approval.

Approved: March 3, 1973.

CHAPTER NO. 88

An Act to Amend Sections 75-7214 and 75-8211, R.C.M. 1947, to Allow the Trustees of a School District to Expend Funds Collected for Rental or Lease of School Buildings.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7214, R.C.M. 1947, is amended to read as follows:

"75-7214. **Housing and dormitory fund.** The trustees of any district that provides pupil or teacher housing in district owned buildings under a lease or rental agreement with pupils or teachers *or receives moneys under the provision of section 75-8211* shall establish a housing and dormitory fund. All moneys received from such lease or rental agreements shall be deposited with the county treasurer to the credit of the housing and dormitory fund, general fund, or the debt service fund. Whenever the end-of-the-year cash balance of the housing and dormitory fund is more than three thousand dollars ($3,000), such cash balance in excess of three thousand dollars ($3,000) shall be transferred to the general fund of the district.

Any expenditure of moneys from the housing and dormitory fund shall be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the housing and dormitory fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund."

Section 2. Section 75-8211, R.C.M. 1947, is amended to read as follows:

"75-8211. **Leasing district property and disposition of any rentals.** The trustees of any district shall have the authority to rent, lease, or let any buildings or facilities of the district under the terms specified by the trustees. Any money collected for such rental, lease, or letting shall be deposited to the credit of *the housing and dormitory fund* or that fund which finances the cost of maintaining such real property."

Approved: March 3, 1973.

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CHAPTER NO. 89

An Act Amending Sections 75-7604, 75-7605 and 75-7607, R.C.M. 1947, Relating to the Requirements for Textbook Dealers to File a Copy of All Textbooks Offered For Sale to School Districts with the Superintendent of Public Instruction; and to Repeal Sections 75-7606 and 75-7611, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7604, R.C.M. 1947, is amended to read as follows:

"75-7604. **Textbooks obtained from licensed textbook dealer.** Textbooks selected and adopted by district shall be obtained from a licensed textbook dealer."

Section 2. Section 75-7605, R.C.M. 1947, is amended to read as follows:

"75-7605. **Licensing textbook dealers.** Textbook dealers shall be licensed to sell textbooks by the superintendent of public instruction. To obtain a license a textbook dealer shall first file with the superintendent of public instruction his written agreement:

(1) to guarantee that textbooks shall be supplied to any district at the listed, uniform sales prices in effect for schools; except, that such prices may be reduced in accordance with this section;

(2) to guarantee that, at no time, shall any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(3) to reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond shall run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond shall be set by the superintendent of public instruction and shall be not less than two thousand dollars ($2,000) but not more than ten thousand dollars ($10,000). The bond shall be approved by the attorney general. It shall be the responsibility of the textbook dealer to maintain the surety bond on a current basis.

When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent

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of public instruction shall issue a license to the textbook dealer."

Section 3. Section 75-7607, R.C.M. 1947, is amended to read as follows:

"75-7607. **Notification and processing of complaint against a licensed textbook dealer.** It shall be the duty of any district or county superintendent to notify the superintendent of public instruction whenever it is ascertained that a licensed textbook dealer is:

(1) offering to supply textbooks *without a license as prescribed in section 75-7605;*

(2) offering to sell textbooks at a higher price than the listed, uniform sales price filed with the superintendent of public instruction;

(3) offering to sell textbooks at a higher shipping point price than the shipping point price of the same textbooks distributed elsewhere in the United States; *or*

(4) in any other way, performing contrary to the laws regulating the offering of textbooks for sale or adoption to districts.

Upon receipt of such notification from the district or county superintendent, the superintendent of public instruction shall notify the appropriate licensed textbook dealer of the complaint. Once the superintendent of public instruction has found that the licensed textbook dealer has violated any provision of this section and he fails to rectify his error within thirty (30) days of the notification of the finding of a violation, he shall forfeit his surety bond. The attorney general, upon written request of the superintendent of public instruction, shall proceed to collect by legal action the full amount of the surety bond. Any amount so recovered shall be paid into the state public school equalization aid account."

Section 4. Sections 75-7606 and 75-7611, R.C.M. 1947 are repealed.

Approved: March 3, 1973.

CHAPTER NO. 90

An Act to Amend Section 93-8625, R.C.M. 1947, to Allow Poor Persons to Commence or Defend Actions Before Administrative Tribunals Without Being Subject to Costs.

WHEREAS, section 93-8625, R.C.M. 1947, gives the right to sue or defend in any of the courts of this state to poor persons without costs, amendment should be made to remove any ambiguity as to whether this would also include administrative tribunals.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-8625, R.C.M. 1947, is amended to read as follows:

"93-8625. **Poor person may sue or defend without costs.** Any person may commence and prosecute or defend an action in any of the courts *and administrative tribunals* of this state who will file an affidavit stating that he has a good cause of action or defense, that he is unable to pay the costs, or procure security to secure the same; then it is hereby made the duty of the officers of the courts *and administrative tribunals* to issue all writs and serve the same, and perform all services in the action without demanding or receiving their fees in advance."

Approved: March 3, 1973.

CHAPTER NO. 91

An Act Correcting Certain Errors and Omissions and to Clarify the Intent of Certain Sections of the 1971 Codification and General Revision of Title 75; and Amending Sections 75-5916, 75-5941, 75-6303, 75-6410, 75-6412, 75-6508, 75-7810, and 75-8205, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-5916, R.C.M. 1947, is amended to read as follows:

"75-5916. **Qualification and oath.** Any person who receives a certificate of election as a trustee under the provisions of section 75-6423 shall not assume the trustee position until he has qualified. Such person shall qualify by completing and filing an oath of office with the county superintendent not *more* than fifteen (15) days after the receipt of the certificate of election. After a person has qualified for a trustee position, he shall hold such position for the term of the position and until his successor has been elected or appointed and has been qualified.

If the elected person does not qualify in accordance with this requirement, a person shall be appointed in the manner provided by section 75-5918 and shall serve until the next regular election."

Section 2. Section 75-5941, R.C.M. 1947, is amended to read as follows:

"75-5941. **Personal liability of trustees.** The trustees of each district shall be responsible for the proper administration and utiliza-

tion of all moneys of the district in accordance with the provisions of law and this Title. Failure or refusal to do so shall constitute grounds for removal from office. Those trustees consenting to *illegal* use of the moneys shall be jointly and individually liable to the district for any losses the district has realized. The county attorney shall prosecute any proceeding arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action shall be liable for the costs if the action fails."

Section 3. Section 75-6303, R.C.M. 1947, is amended to read as follows:

"75-6303. **Compulsory enrollment and excuses.** Any parent, guardian or other person who is responsible for the care of any child who is seven (7) years of age or older prior to the first day of school in any school fiscal year and has not yet reached his sixteenth birthday *and* who has not completed the work of the eighth (8th) grade, shall cause the child to be instructed in the English language and in the subjects prescribed by section 75-7503 or section 75-7504, whichever is applicable. Such parent, guardian or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless:

(1) the child is enrolled in a private institution which provides instruction in the subjects prescribed by section 75-7503 or section 75-7504, whichever is applicable, and in which the basic language taught is English;

(2) the child is enrolled in a school of another district or state under any of the tuition provisions of this Title;

(3) the child is provided with supervised correspondence study or supervised home study under the transportation provisions of this Title; or

(4) the child is excused from enrollment in a school of the district when it is shown that his bodily or mental condition does not permit his attendance and the child cannot be instructed under the special education provisions of this Title.

The excuse provided for in subsection (4), above, shall be issued by the district superintendent, or the county superintendent when there is no district superintendent employed by the district. Whenever an excuse is denied by the applicable official, an appeal of such decision may be made to the district court of the county within ten (10) days after the decision upon giving a bond in the amount set by the court to pay all costs of the appeal. The decision of the district court shall be final.

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(5) the child is excused from compulsory school attendance upon a determination by a district judge that such attendance is not in the best interest of the child."

Section 4. Section 75-6410, R.C.M. 1947, is amended to read as follows:

"75-6410. **Qualifications of elector.** *Every* person is entitled to vote at school elections if he has the following qualifications:

(1) He is registered to vote with the county registrar *as a resident in the school district in which he resides and proposes to vote* in the manner provided by the general state election laws except in regard to the closure of elector registration as provided in section 75-6413;

(2) He shall be of a minimum age for voting provided by the constitution of the state of Montana;

(3) He has met the residency requirement for voting as provided by the constitution of the state of Montana, and

(4) He is a citizen of the United States.

No person convicted of a felony has the right to vote unless he has been pardoned.

No person adjudicated insane has the right to vote unless he has been restored to capacity as provided by law."

Section 5. Section 75-6412, R.C.M. 1947, is amended to read as follows:

"75-6412. **Elector challenges.** *An elector may challenge the qualifications of another elector under the provisions of section 23-3015.* Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in section 23-3611, R.C.M. 1947. Such challenge shall be determined in the same manner, using the same oath as provided in chapter 36 of Title 23, R.C.M. 1947.

Any person who shall have been challenged under any of the provisions of this section and who shall swear or affirm falsely before any school election judge shall be guilty of perjury and shall be punished accordingly."

Section 6. Section 75-6508, R.C.M. 1947, is amended to read as follows:

"75-6508. **Elementary district annexation.** An elementary district may be annexed to another elementary district located in the same county *when one of the conditions of section 75-6507 is met* in accordance with the following procedure:

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(1) At the time the annexation proposition is first considered, the districts involved shall jointly determine whether the annexation shall be made with or without the joint assumption of the bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(2) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

(a) the trustees may pass a resolution requesting the county superintendent to order an election to consider an annexation proposition for their district; or

(b) not less than twenty per cent (20%) of the electors of the district who are qualified to vote under the provisions of section 75-6410 may petition the county superintendent requesting an election to consider an annexation proposition for their district.

(3) Before ordering an election on the proposition the county superintendent shall first receive from the trustees of the annexing district a resolution giving him the authority to annex such district.

(4) When the county superintendent has received authorization from the annexing district, he shall, within ten (10) days after the receipt of the resolution or a valid petition from the district to be annexed and as provided by section 75-6406, order the trustees of the district to be annexed to call an annexation election.

(5) The district shall call and conduct an election in the manner prescribed in this Title for school elections. In addition:

(a) if the district to be annexed is to jointly assume with the annexing district, the bonded indebtedness of the annexing district, the annexation election shall also follow the procedures prescribed in section 75-6509; or

(b) if the district to be annexed is not to jointly assume with the annexing district, the bonded indebtedness of the annexing district, the annexation election shall also follow the procedures prescribed in section 75-6510.

(6) After the county superintendent has received the election certificate from the trustees of the district conducting the annexation election under the provisions of section 75-6423 and if the annexation proposition has been approved by such election, he shall order the annexation of the territory of the elementary district voting on such proposition to the elementary district that has authorized the annexation to its territory. Such order shall be issued within ten (10) days after the receipt of the election certificate and, if it be for annexation with the assumption of bonded indebtedness, shall specify that all the taxable real and personal property of the annexed

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territory shall jointly assume with the annexing district the existing bonded indebtedness of the annexing district. The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts involved in the annexation order. If the annexation proposition is disapproved in the district to be annexed, it shall fail and the county superintendent shall notify each district of the disapproval of the annexation proposition."

Section 7. Section 75-7810, R.C.M. 1947, is amended to read as follows:

"75-7810. **No tuition when attending a state institution.** When a child is attending an institution supported solely by funds of the state of Montana, the resident district or county shall not be required to pay tuition to the state institution for such child, but whenever at the recommendation of institution officials such child attends classes conducted by a school within a local district, the district *or county, whichever is applicable,* wherein the parents or guardian of the child maintain legal residence shall pay tuition to the district or county operating the school in accordance with the provisions of section 75-7201 or section 75-7808, whichever section applies to the circumstances of the child. Transportation payments shall be made for students enrolled in such classes or receiving training at the state institution. The schedule of transportation payments shall be approved in accordance with existing special education transportation payment schedules and shall be approved by the county transportation committee and the superintendent of public instruction."

Section 8. Section 75-8205, R.C.M. 1947, is amended to read as follows:

"75-8205. **Trustees may sell property when resolution passed after hearing, and appeal procedure.** Whenever the trustees of any district determine that a site, building, or any other real *or personal* property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of such district, the trustees may sell or otherwise dispose of such real *or personal* property in accordance with this section and without conforming to the provisions of section 75-8204.

The trustees of any district shall adopt a resolution stating their intention to sell or otherwise dispose of district real *or personal* property because it is or is about to be become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district. When such a resolution is adopted, the trustees shall set the date of the trustees meeting when they shall consider the adoption of a resolution to authorize the sale or other disposition of such real

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or personal property. The trustees shall cause notices to be posted in the manner required for school elections that state the text of the resolution of intention to sell or dispose of the real *or personal* property and the time, date, and place when the resolution authorizing the sale or other disposition will be considered for adoption. Any elector of the district shall have the right to be present and protest the passage of the resolution. If the trustees adopt the resolution and an elector has protested such adoption at the trustee meeting conducted for the hearing on the resolution, such resolution shall not become effective for five (5) days after the date of its adoption.

Any taxpayer may appeal the resolution of the trustees, at any time within five (5) days after the date of the resolution, to the district court by filing a verified petition with the clerk of such court and serving a copy of such petition upon the district. The petition shall set out in detail the objections of the petitioner to the adoption of the *resolution* or to the disposal of the property. The service and filing of the petition shall stay the resolution until final determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest, convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it deems necessary. Its proceedings shall be summary and informal, and its decision shall be final.

The trustees of a district that has adopted a resolution to sell or otherwise dispose of *district real or personal* property and, if appealed, has been upheld by the court shall sell or dispose of such real *or personal* property in any reasonable manner that they determine to be in the best interests of the district. The moneys realized from the sale or disposal shall be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees.''

Approved: March 3, 1973.

CHAPTER NO. 92

An Act to Include Pupils in State Institutional Schools Meeting Eligibility Requirements in the School Food Services Program.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The provisions of sections 75-8002 through 75-8006 shall apply to pupils in state institutional schools meeting the requirements established by the superintendent of public instruction and the applicable federal laws and regulations.

Approved: March 3, 1973.

CHAPTER NO. 93

An Act to Implement Article II, Section 18, Concerning Sovereign Immunity by Providing Availability of Insurance Coverage for Governmental Entities; Amending Section 87-701, R.C.M. 1947; Repealing Section 83-706, R.C.M. 1947; and Providing for an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 83-701, R.C.M. 1947, is amended to read as follows:

"83-701. **Jurisdiction of district courts.** The district courts of the state of Montana shall have exclusive judisdiction on any claim against the state of Montana for *injury to person or property,* accruing on or after *July 2, 1973,* on account of damage to or loss of property, or on account of personal injuries or death caused by the negligence or wrongful act or omission of any employee of the state of Montana, while acting within the scope of his office or employment, under circumstances where the state of Montana, if a private person, would be liable to the claimant for such damage, loss, injury or death, in accordance with the law of the state of Montana."

Section 2. There is a new section to be numbered 83-706.1, R.C.M. 1947, which reads as follows:

83-706.1. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to claims for relief and causes of action arising after July 1, 1973. The state, through the department of administration, has the right to provide for self insurance for claims for injury to a person or property. The state, counties, cities, towns, and all other local gevornmental entities have the right also, but not the duty, to purchase insurance to protect against claims for injury to a person or property.

Section 3. Section 83-706, R.C.M. 1947, is repealed.

Section 4. Section 1 and Section 3 of this act are effective on July 1, 1973, Section 2 is effective on passage.

Approved: March 5, 1973.

CHAPTER NO. 94

An Act Implementing Article II, Section 14, "Adult Rights" of the 1972 Montana Constitution, by Providing Persons Eighteen (18) Years of Age or Older with Certain Rights; and Amending Sec-

tions 3-1503, 4-161, 4-330, 4-337, 4-413, 4-439, 4-502, 4-504, 4-506, 11-951, 11-1602, 11-1817, 26-915, 31-127, 31-128, 40-5324, 41-1135, 41-1136, 41-2304, 48-143, 59-301, 61-203, 64-101, 66-1305, 66-3208, 69-1509, 69-1604, 75-8702, 80-1415, 81-407, 81-908, 93-1301, 93-100-2, 94-2721, 94-3702, 94-35-106, and 94-35-106.2, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 3-1503, R.C.M. 1947, is amended to read as follows:

"3-1503. **Examination of witnesses—inspections of factories, etc.** In discharging the duties imposed upon the division of labor and publicity, the commissioner of labor and industry shall have power to administer oaths, to examine witnesses under oath, to take depositions or cause same to be taken, to deputize any citizen age eighteen (18) or older to serve subpoenas upon witnesses, and to issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts. The commissioner of labor and industry shall likewise have the authority to inspect any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment, and any person who shall refuse to the commissioner admission to any of the industrial establishments herein enumerated when admission is requested for the purpose of inspection, or who shall, when requested by the commissioner, willfully neglect or refuse to furnish to him any statistics or other information which may be in the possession or under the control of such person, or who shall refuse to obey any subpoena issued by the commissioner, shall be deemed guilty of a misdemeanor and be punished accordingly. Nothing herein contained shall in any manner confer upon the commissioner of labor and industry the authority to interfere in any manner with the conduct of the matters under the control of the industrial accident board, nor shall said commissioner be charged with the duty of enforcing any of the laws of the state of Montana pertaining to the affairs of said industrial accident board, nor with the enforcement of the safety provisions of the Workmen's Compensation Act."

Section 2. Section 4-161, R.C.M. 1947, is amended to read as follows:

"4-161. **Age limit for sale of liquor.** Except in the case of liquor given to a person under the age of *eighteen (18)* years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply liquor to any person under the age of *eighteen (18)* years, or permit any person under that age to consume liquor."

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Section 3. Section 4-330, R.C.M. 1947, is amended to read as follows:

"4-330. **Purchase of beer by retailer—persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers.** It shall be unlawful for such retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this act.

It shall be unlawful for any brewer, wholesaler or retailer, his or her employee or employees to sell, deliver or give away, or cause or permit to be sold, delivered or given away, any beer to:

1. Any person under the age of *eighteen (18)* years;

2. Any intoxicated person or any person actually, apparently or obviously intoxicated;

3. An habitual drunkard; or

4. An interdicted person.

Any brewer, wholesaler or retailer violating any of the provisions of this section, shall upon conviction thereof be subject to the penalties provided for in section 4-305 of the Montana Beer Act, and in addition thereto the license of any such brewer, wholesaler or retailer shall, in the discretion of the board, be immediately revoked, or said license may be suspended for a period of not more than three (3) months. Any minor or other person who knowingly misrepresents his or her qualification for the purpose of obtaining beer from any licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 4-305 of the Montana Beer Act."

Section 4. Section 4-337, R.C.M. 1947, is amended to read as follows:

"4-337. **Railroad car or carrier's license—application for and issuance of license—inspection—sale to persons under** *eighteen (18)* **years of age or disorderly person.** Any person maintaining or operating any railroad car or train as a common carrier for the transportation of passengers, or any other person operating a buffet or dining car for any common carrier, desiring to sell beer under the provisions of this act, shall first apply to the board for a permit so to do, accompanying the application with the license fee herein prescribed. Upon being satisfied from said application or otherwise that the applicant is qualified under the provisions of this act, the board shall issue a license for the sale of beer by such person, which shall at all times be prominently displayed in the car, operated by the applicant, wherein beer or malt liquors are served. The board shall have the right at any time to make an inspection of the train or cars

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operated by any railway company in this state, to ascertain whether this act is being strictly complied with, and if not, the board is authorized and empowered to cancel such license, after which the sale of any beer or malt liquors by any such common carrier, or other person operating buffet or dining car for such common carrier, shall be unlawful and subject to the penalties herein prescribed. And it shall be unlawful for any such common carrier, or other person operating buffet or dining car for such common carrier, to sell beer or malt liquors to any person under the age of *eighteen (18)* years or who may appear to be in an intoxicated or disorderly condition."

Section 5. Section 4-413, R.C.M., 1947, is amended to read as follows:

"4-413. **Persons to whom liquor may not be sold or given.** No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any liquor, beer or wine to:

1. Any person under the age of *eighteen (18)* years.

2. Any intoxicated person or any person actually, apparently or obviously intoxicated.

3. A habitual drunkard.

4. An interdicted person.

5. Any minor, or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining liquor, beer or wine from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 4-439 provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of liquor, beer or wine to any person in violation of any federal law."

Section 6. Section 4-439, R.C.M. 1947, is amended to read as follows:

"4-439. **Penalty for violating act—revocation of license.** Any person violating any of the provisions of this act, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided by law, except as is herein otherwise provided. If any such licensee is convicted of any offense under this act his license shall be immediately revoked, or in the discretion of the board suspended temporarily for a time to be determined by the board. Further, if any person under the age of *eighteen (18)* is convicted of an offense under this act he shall be subject to a one hundred dollar ($100) fine or thirty (30) days in confinement. It shall be further mandatory under the provisions of this act that all such licensees display in a prominent place in his

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premises a placard as issued by the board stating fully the consequences for violations by persons under the age of *eighteen (18)* years of the provisions of this act.

Any person who invites a person under the age of *eighteen (18)* years into a public place where liquor is sold and treats, gives or purchases liquor for such person, or permits such person in a public place where liquor is sold to treat, give or purchase liquor for him, or holds out such person to be over the age of *eighteen (18)* years to the owner of the liquor establishment, or his or her employee or employees, shall be guilty of a misdemeanor."

Section 7. Section 4-502, R.C.M. 1947, is amended to read as follows:

"4-502. **Identification card—form.** Any person who desires to procure any beer and/or liquor from any vendor or licensee may, for the purpose of aiding such vendor or licensee to determine whether or not such person is at least *eighteen (18)* years of age, be required to complete and sign an identification card, which shall be in substantially the following form:

ALCOHOLIC BEVERAGES IDENTIFICATION CARD

This card if properly completed and signed may be accepted by the vendor or licensee named below for the purpose of establishing the legal age of the person designated who desires to purchase alcoholic beverages.

Complete Two or More of the Following:

Social Security Card No. .....; Issued at ..... Date .....
Birth Certificate issued at .....; Date of Birth .....
Draft Card issued at .....; Date of birth .....
Discharge Papers: Service .....; Issued at .....
Date of Birth .....
Military Identification Card or Pass: Service .....;
Issued at ..... Date ..... Age Shown .....
Driver's License: Date .....; Issued at .....;
Age Shown .....
I hereby represent to ..... that I am over the age of *eighteen (18)* years, having been born on the ..... day of ....., 19 ....., at ....., and this statement is made for the purpose of establishing my age in order to obtain service of alcoholic beverages with the full knowledge that I am subject to fine and/or imprisonment, for any misrepresentation made herein. I have submitted the documents and papers checked on this card, and the person to whom submitted has compared the signatures thereon and has also compared the descriptions on said documents with my physical characteristics.

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(Witness) ..... (Signature) .....
(Address) ..... (Address) .....
The Montana liquor control board shall cause to be printed and distributed upon request to vendors and licensees blank forms of the identification card herein prescribed."

Section 8. Section 4-504, R.C.M. 1947, is amended to read as follows:

"4-504. **License of licensee not to be revoked or suspended for selling to minor when identification card properly completed, signed and filed.** The license of any licensee in possession of an identification card properly completed, signed and filed as provided in this act shall not be suspended or revoked for selling beer and/or liquor to a person under the age of *eighteen (18)* years who has presented such identification card at the time of purchase and delivered the same for filing as herein provided."

Section 9. Section 4-506, R.C.M. 1947, is amended to read as follows:

"4-506. **All persons attaining the age of** *eighteen (18)* **years may apply to the county clerk and recorder for an identification card.** All persons attaining the age of *eighteen (18)* years may apply to the county clerk and recorder of the county in which the applicant resides for an identification card which shall prima facie establish that the applicant has reached the age of *eighteen (18)* years."

Section 10. Section 11-951, R.C.M. 1947, is amended to read as follows:

"11-951. **Poll tax—limitation on amount—work for failure to pay.** The city or town council has power: To levy and collect annually from each able-bodied resident of the city or town, between the ages of *eighteen (18)* and forty-five (45) years, a poll tax not exceeding three dollars ($3) per capita; and in case of failure or refusal of any person within the prescribed age to pay said tax, to provide by ordinance that the person failing or refusing must work one day on the public streets of the city."

Section 11. Section 11-1602, R.C.M. 1947, is amended to read as follows:

"11-1602. **Jurisdiction of police courts.** The police court has concurrent jurisdiction with the justice of the peace of the following public offenses committed within the county:

1. Petit larceny.

2. Assault and battery, not charged to have been committed

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upon a public officer in the discharge of his official duty, or with intent to kill.

3. Breaches of the peace, riots, affrays, committing willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars ($500), or by imprisonment not exceeding six (6) months, or by both fine and imprisonment.

4. Proceedings respecting vagrants, lewd, or disorderly persons. Such offenses must be prosecuted in the name of the state of Montana.

5. Possession of beer or liquor by persons under the age of *eighteen (18)* years in violation of section 94-35-106.2.

6. Selling, giving away or disposing of intoxicating liquor to minors in violation of section 94-35-106.

The police court shall have no jurisdiction of any civil cause, except as provided in the next section."

Section 12. Section 11-1817, R.C.M. 1947, is amended to read as follows:

"11-1817. **Age restriction on policemen—not applicable to veterans, present members and police reserves.** The members of the police department on the active list of any city at the time of their appointment under this act shall not be less than *eighteen (18)* years of age, nor more than thirty-five (35) years of age, but this restriction shall not apply to any member of any present police department, nor to police reserves hereinafter provided for nor to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of service be not less than three (3) months."

Section 13. Section 26-915, R.C.M. 1947, is amended to read as follows:

"26-915. **Application for license—contents—requirements and qualifications—fees.** (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the fish and game commission which shall include:

(a) The applicant's full name, address and telephone number.

(b) The address of his principal place of business in the state of Montana.

(c) The amount and kind of property and equipment owned and used in the outfitting business of the applicant, if an outfitter's license application.

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(d) The experience of the applicant, including years of experience as an outfitter or guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain.

(e) A signed statement of the licensed outfitter by whom the professional guide is to be employed, that the said guide is in fact, to be employed by such outfitter and stating that said outfitter recommends the applicant for his qualifications.

(f) A statement by a Montana fish and game warden to the fish and game director that the equipment listed on the application has been inspected by said warden and that the same is in fact, owned or used by the applicant and is in good operating condition and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant.

(g) A statement of the maximum number of guests to be taken at any one (1) time.

(h) Each new applicant who intends to outfit on a national forest must have the written approval of the rangers in whose district he will establish hunting camps, and such written approval shall accompany the application.

(i) Each application for a partnership, company or corporation must be in the name of one individual who qualifies under the provisions of this act.

(2) Each applicant for an outfitter's license shall meet the following requirements:

(a) Be a competent person of good moral character.

(b) Be a citizen of the United States and a resident of Montana for a full two (2) years, unless the residency requirement is waived by the fish and game commission.

(c) Be at least *eighteen (18)* years of age.

(d) Be in such physical condition as to be able to perform his assigned or obligated duties.

(e) To own or hold under written lease or to represent a company, corporation or partnership who owns or holds under written lease the equipment and facilities as is necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients. All equipment and facilities shall be subject to inspection at all reasonable times and places by the fish and game commission or its designated agent.

(f) Pass a standard examination administered by the fish

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and game director, or an agent designated by him, which said examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The said examination shall test the applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

(i) Fish and game laws and regulations.

(ii) Practical woodsmanship.

(iii) General knowledge of big game.

(iv) Field preparation of trophies.

(v) Care of game meat.

(vi) Use of outfitter's gear as shown on the application.

(vii) Knowledge of area and terrain.

(viii) Knowledge of firearms.

(ix) Federal and state regulations as applicable to outfitting.

(x) Practical first aid.

(3) Each applicant for a professional guide's license shall meet the following requirements:

(a) Be a competent person of good moral character.

(b) Be a citizen of the United States and a resident of Montana as defined in this act.

(c) Be eighteen (18) years of age or older and in such physical condition as to be able to perform his assigned duties.

(d) Be endorsed and recommended by an outfitter with a valid license.

(4) A resident guide shall have been issued a valid resident wildlife conservation license.

(5) Residence requirements for procuring an outfitter's license are hereby waived as to persons who are citizens of a common boundary state and of a common county thereof to the same extent the home state of the applicant waives such requirements for the residents of Montana except for fee.

For the purpose of obtaining a guide's license only, nonresident professional guides employed by resident outfitters shall be considered resident professional guides.

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(6) Applications shall be made to and filed with the fish and game director and accompanied by a license fee as herein stipulated, which will be refunded if and when the application is denied. The fee is to be used in investigation of the applicant, in enforcement of this act, and for administrative costs.

Resident outfitter's license fee.....$ 50.00

Resident professional guide's fee.....$ 15.00

Resident guide's license is a valid Montana wildlife conservation license.

Nonresident outfitter's license fee.....$150.00

Nonresident professional guide's fee.....$100.00

Provided, however, that if the nonresident resides in a state requiring residents of the state of Montana to pay in excess of said amounts for similar license, the fee for such nonresident outfitters or guides shall be the same amount as such higher fee charged in the state where such nonresident resides.

(7) The fish and game director in his discretion may cause to be made such additional investigation and inquiry, relative to the applicant for outfitter's license and an applicant's qualifications as he shall deem advisable. Final decision as to issuance of renewal applications shall be made not later than thirty (30) days from the date of receipt of the completed application for renewal of license, and upon a new application, not later than ninety (90) days from the date of receipt of the completed application for license. A licensee in good standing shall be entitled to a new license for the ensuing license year upon complying with the provisions of *this section,* but is exempt from having to retake the written examination."

Section 14. Section 31-127, R.C.M. 1947, is amended to read as follows:

"31-127. **What persons shall not be licensed.** The Board shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of sixteen (16) years, with these exceptions:

(a) The board may issue an operator's license to a person who is fifteen (15) years if he has passed a driver's education course approved by the Montana highway patrol and the superintendent of public instruction.

(b) The board may issue a restricted license as hereinafter provided to any person who is at least thirteen (13) years of age;

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2. To any person, as a chauffeur, employed by another for the principal purpose of driving a motor vehicle when in use exclusively for the transportation of property for compensation, who is under the age of eighteen (18) years, nor to any person, as a chauffeur, who is employed by another for the principal purpose of driving a motor vehicle transporting passengers for hire or transporting school children, who is under the age of *eighteen (18)* years;

3. To any person, as an operator or chauffeur, whose license has been suspended during such suspension, nor to any person whose license has been revoked, except as provided in section 31-149;

4. To any person, as an operator or chauffeur, who is an habitual drunkard, or is addicted to the use of narcotic drugs;

5. To any person, as an operator or chauffeur, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

6. To any person, as an operator or chauffeur, who is required by this act to take an examination, unless such person shall have successfully passed such examination;

7. To any person who is required under the provisions of the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

8. To any person as an operator or chauffeur, who is suffering from any form of epileptic type seizures or similar disorders characterized by lapse of consciousness or control, either temporary or prolonged, which is or may become chronic: provided that the board may in its discretion issue a license to a person suffering from epileptic type seizures or similar disorder characterized by lapse of consciousness or control, if otherwise qualified to be licensed to drive a motor vehicle, when the afflicted person can show that he has not experienced an epileptic type seizure or similar disorder characterized by lapse of conciousness or control for a period of two (2) years and when recommended by the state health officer as being controlled medically or otherwise to the degree that the affliction will not interfere with the safe operation of a motor vehicle."

Section 15. Section 31-128, R.C.M. 1947, is amended to read as follows:

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"31-128. **Classification of chauffeurs — special restrictions.** (a) The board upon issuing a chauffeur's license shall indicate thereon the class of license so issued and shall appropriately examine each applicant according to the class of license applied for and may impose such rules and regulations for the exercise thereof as it may deem necessary for the safety and welfare of the traveling public.

(b) No person who is under the age of *eighteen (18)* years shall drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons for compensation nor in either event until he has been licensed as a chauffeur for either such purpose and the license so indicates. The board shall not issue a chauffeur's license for either such purpose unless the applicant has had at least one (1) year of driving experience prior thereto and the board is fully satisfied as to the applicant's competency and fitness to be employed."

Section 16. Section 40-5324, R.C.M. 1947, is amended to read as follows:

"40-5324. **Benefits on lives of children.** (1) A society may provide for benefits on the lives of children under the minimum age for adult membership but not greater than *eighteen (18)* years of age at time of application therefor, upon the application of some adult person, as its laws or rules may provide, which benefits shall be in accordance with the provisions of section 40-5323 of this chapter. A society may, at its option, organize and operate branches for such children. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice in the management of the society.

(2) A society shall have power to provide for the designation and changing of designation of beneficiaries in the certificates providing for such benefits and to provide in all other respects for the regulation, government and control of such certificates and all rights, obligations and liabilities incident thereto and connected therewith."

Section 17. Section 41-1135, R.C.M. 1947, is amended to read as follows:

"41-1135. **Employment of persons under** *eighteen (18)* as bartenders forbidden. No person under the age of *eighteen (18)* years of age shall be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing liquors, beer or wines in any establishment which sells liquors, beer or wines at retail."

Section 18. Section 41-1136, R.C.M. 1947, is amended to read as follows:

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"41-1136. **Penalty.** Any retail vendor of liquors, beer or wines who employs any such person under the age of *eighteen (18)* years is guilty of a misdemeanor."

Section 19. Section 41-2304, R.C.M. 1947, is amended to read as follows:

"41-2304. **Exclusions.** The provisions of section *41-2303* of this act shall not apply with respect to:

(a) Students participating in a distributive education program established under the auspices of an accredited enducational agency.

(b) Persons employed in private homes whose duties consist of menial chores such as baby sitting, mowing lawns, cleaning sidewalks.

(c) Persons employed directly by the head of a household to care for children dependent upon the head of the household.

(d) Immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a "dependent."

(e) Any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis.

(f) Handicapped workers (1) engaged in work which is incidental to training or evaluation programs or (2) whose earning capacity is so severely impaired that they are unable to engage in competitive employment.

(g) Apprentices or learners who may be exempted by the commissioner for a period not to exceed thirty (30) days of their employment.

(h) Learners under the age of *eighteen (18)* who are employed as farm workers, provided that such exclusion shall not exceed a period of one hundred eighty (180) days from their initial date of employment and, further provided that during this exclusion period wages paid such learners may not be less than fifty per cent (50%) of the minimum wage rate established in this act.

(i) Retired or semi-retired persons performing part-time incidental work as a condition of their residence on a farm or ranch.

(j) Any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner.

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(k) Any individual employed by the United States of America."

Section 20. Section 48-143, R.C.M. 1947, is amended to read as follows:

"48-143. **Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages.** (1) Every male person who has attained the full age of *eighteen (18)* years or who has obtained the permission of the district judge as provided in subparagraph (3) and every female person who has attained the full age of *eighteen (18)* years or who has obtained the permission of the district judge as provided in subparagraph (3) shall be capable in law of contracting marriage if otherwise competent.

(2) If either of the contracting parties is under the age of *eighteen (18),* no license shall be issued without the consent of his or her parents or guardian, or of the parent having the actual care, custody and control of said party, given before the clerk of the court under oath, or certified under the hands of such parents or guardian as aforesaid attested by two adult witnesses, and properly verified by affidavit (or affirmation) before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of the said clerk of court at the time of application for said license. If there is no guardian or parent having the actual care, custody and control of said party, then the judge of the district court in the county where the application is pending may, after hearing upon proper cause shown, make an order allowing the marriage of said party.

(3) A male under the age of *eighteen (18)* or a female under the age of *eighteen (18)* may lawfully contract to marry and obtain a marriage license if there is first procured the consent of the parent or guardian as provided in subparagraph (2) and if the district judge of the county wherein the application is made, after examining the parties under oath, shall decide that it is to the best interest of such applicant and of the established public policy of the state of Montana, and shall authorize the clerk of the court to issue the license in conformance with the other provisions of this act."

Section 21. Section 59-301, R.C.M. 1947, is amended to read as follows:

"59-301. **Age and citizenship.** No person is capable of holding a civil office in this state, who at the time of his election or appointment is not of the age of *eighteen (18)* years and a citizen of this state."

Section 22. Section 61-203, R.C.M. 1947, is amended to read as follows:

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"61-203. **Who may adopt.** The following persons are eligible to adopt a child:

(1) A husband and wife jointly, or either the husband or wife if the other spouse is a parent of the child.

(2) An unmarried person who is least *eighteen (18)* years old.

(3) A married person at least *eighteen (18)* years old who is legally separated from the other spouse.

(4) In the case of an illegitimate child, its unmarried father or mother."

Section 23. Section 64-101, R.C.M. 1947, is amended to read as follows:

"64-101. **Minors and adults defined.** Minors are:

1. Males under *eighteen (18)* years of age;

2. Females under *eighteen (18)* years of age. All other persons are adults."

Section 24. Section 66-1305, R.C.M. 1947, is amended to read as follows:

"66-1305. **Examinations—admission to practice—nonresidents.** 1. The board of examiners shall make rules and regulations relative to and governing the qualifications of all applicants for certificates of registration as optometrists not inconsistent with the provisions of this act and if the applicant does not meet the requirements of such rules and regulations, then the applicant will not be eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of such rules and regulations, said applicant, before beginning to practice optometry in this state, must pass an examination given by and conducted before said board of examiners. All examination shall be practical in character and designated to ascertain the applicant's fitness to practice the profession of optometry and shall be conducted in the English language. The board shall, from time to time, publish and distribute the examination requirements for a certificate to practice optometry in the state of Montana. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

2. No person shall be eligible to take said examination who is not *eighteen (18)* years of age, and who is not a citizen of the United States of America, and who is not of good moral character.

3. On and after July 1st, 1925, no person shall be eligible to take said examination unless he shall have certificates of graduation from

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an accredited high school and from a school of optometry wherein the practice and science of optometry is taught in a course of study covering eight semesters, or four years, of actual attendance and which school is accredited by the international association of boards of examiners in optometry. In lieu of said certificates of graduation an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least six years in some other state or states.

4. Every person desiring to be examined in optmetry shall file an application in the manner prescribed by said board at least four weeks before the examination shall be held, and a fee of twenty-five dollars ($25) shall accompany said application.

5. Every person successfully passing said examination shall be registered in the board register, which shall be kept by the secretary of said board, and upon the payment of a fee of ten dollars ($10.00) shall receive a certificate of registration signed by the members of said board.

6. In case an applicant for a certificate of registration has been admitted to practice optometry in any state, and has secured an average of seventy-five *percent* (75%) in his examination in such other state, he may, at the discretion of the said board, be granted a certificate to practice his profession in Montana, without examination, upon his payment of all fees, provided the state from which said applicant comes offers equal privileges to applicants for certficates of registration from this state.''

Section 25. Section 66-3208, R.C.M. 1947, is amended to read as follows:

"66-3208. **Qualifications and requirements for licensure—reciprocity.** (1) Application for examination for licensing a psychologist shall be made upon forms prescribed by the board.

(2) Prior to January 1, 1973, the board shall license as a psychologist any person who pays the prescribed fee, and who submits evidence by oath that he:

(a) Is a resident of or shows satisfactory evidence of intent to become a resident of Montana at the time he is licensed.

(b) Is at least *eighteen (18)* years of age.

(c) Is of good moral character.

(d) Has received a doctoral degree based on a program of studies, primarily psychological in content, from an accredited college or university having an appropriate graduate program.

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(e) Shall have completed at the time of application a minimum of two (2) years of experience in the practice, research or teaching of psychology. One (1) year of such experience shall be post-doctoral.

(3) After January 1, 1973, all applicants must meet the requirements set forth in subsection (2) of this section and shall pass an examination administered by the board.

(4) Prior to January 1, 1973, a license may be issued to an individual who has been a resident of the state for at least one (1) year and who holds a master's degree from an accredited college or university based on a program which is primarily psychological, and in addition has had five (5) years of professional experience satisfactory to the board, provided he has met the requirements of paragraphs (a), (b) and (c) of subsection (2) of this section.

(5) A license without examination may be issued by the board to any psychologist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this act, or to any psychologist who is a diplomate in good standing of the *American board of professional psychology.*''

Section 26. Section 69-1509, R.C.M. 1947, is amended to read as follows:

"69-1509. **Classification and licensing of engineers.** (1) Engineers entrusted with the operation, care and management of steam or water boilers and steam machinery as specified in the preceding section must be divided into four classes, namely, first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery shall be divided into four classifications in accordance with the following:

(a) First-class engineers shall be licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers shall be licensed to operate steam boilers operating not in excess of two hundred fifty (250) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of three hundred seventy-five (375) pounds per square inch gauge pressure and four hundred fifty degrees Fahrenheit (450°F) temperature, and steam driven machinery not to exceed one hundred (100) horsepower per unit with the exception of traction and hoisting engines.

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(c) Third-class engineers shall be licensed to operate steam boilers operating not in excess of one hundred (100) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of one hundred sixty (160) pounds per square inch gauge pressure and three hundred fifty degrees Fahrenheit (350°F) temperature.

(d) Low-pressure engineers shall be licensed to operate steam boilers operating not in excess of fifteen (15) pounds per square inch gauge pressure or water boilers operating not in excess of fifty (50) pounds per square inch gauge pressure and two hundred fifty degrees Fahrenheit (250°F) temperature.

(3) Each applicant for an engineer's license shall meet the following minimum requirements for the class of engineer's license for which application is being made. Each applicant for any classification must be physically and mentally capable of performing the required duties for the class of engineer's license for which application is being made.

(a) Applicants for low-pressure engineer's license shall have no less than three (3) months' full-time experience in the actual operation of a boiler in this classification and successfully pass a written examination prescribed by the board and has passed his *eighteenth (18th)* birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a low-pressure engineer's license.

(b) Applicants for third-class engineer's license shall have no less than six (6) months' full-time experience in the actual operation of a boiler in this classification, under an engineer holding a valid third-class or higher license, and successfully pass a written examination prescribed by the board and has passed his *eighteenth (18th)* birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a third-class engineer's license.

(c) Applicants for second-class engineer's license shall have:

(1) No less than two (2) years' full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the board and has passed his *eighteenth (18th)* birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license; or

(2) Hold a valid third-class engineer's license and have no less than one (1) year's full-time experience in the actual operation

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of a boiler and steam driven machinery in this classification, under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the board and has passed his *eighteenth (18th)* birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license.

(d) Applicants for first-class engineer's license shall have:

(1) No less than three (3) years' full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the board and has passed his *eighteenth (18th)* birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification, shall be granted a first-class engineer's license; or

(2) Hold a valid second-class engineer's license and have no less than one (1) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the board and has passed his *eighteenth (18th)* birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license; or,

(3) Hold a valid third-class engineer's license and have no less than two (2) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the board and has passed his *eighteenth (18th)* birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license.

(e) Allowable exceptions or variances to the following foregoing minimum requirements are as follows:

(1) Applicants for engineer's license in any classification holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the board and is found to be competent to operate a boiler or boilers and steam driven machinery in that classification shall be granted a license in that classification.

(2) Operating experience in a classification satisfactory to the board, accumulated in United States military services or the merchant marine service may be accepted in lieu of the operating

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experience required for licensing of engineers in each of the foregoing classifications.

(3) Applicants with training in the actual operation of steam or water boilers and steam machinery who have been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other board approved institution or training program in the classification for which he is applying may at the discretion of the board be credited with a maximum of six (6) months' experience toward first, second, or third-class engineer's license.

(4) None of the licenses in this section above named shall entitle the holder thereof to operate a traction engine, but all persons who are entrusted with the care and management of traction engines, or boilers on wheels, are required to pass an examination as to their competency to operate such class of machinery and to procure a license to be known as a traction license. Such traction license shall not entitle the holder thereof to operate any other class of steam machinery specified in the preceding section. Applicants for a traction engineer's license shall have no less than six (6) months' full-time experience in the operation of steam traction engines and successfully pass a written examination prescribed by the board and has passed his *eighteenth (18th)* birthday and is found to be competent to operate a traction engine shall be granted a traction engineer's license. The board at its discretion may waive the experience requirement for operators of traction engines which are maintained and operated as a hobby for the restoration and show purposes of antique equipment."

Section 27. Section 69-1604, R.C.M. 1947, is amended to read as follows:

"69-1604. **First and second-class licenses—qualifications of applicant.** (1) Each applicant for a hoisting engineer's license shall meet the following minimum requirements for the class of license for which application is being made. Each applicant for any classification must be physically and mentally capable of performing the required duties for the class of license for which application is being made.

(a) Applicants for second-class hoisting engineer's license shall have no less than two (2) years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid second-class or first-class license and successfully pass a written examination prescribed by the board and has passed his *eighteenth (18th)* birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a second-class hoisting engineer's license.

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(b) Applicants for first-class hoisting engineer's license shall:

(1) Have no less than three (3) years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the board and has passed his *eighteenth (18th)* birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a first-class hoisting engineer's license; or

(2) Hold a valid second-class license and have no less than six (6) months' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the board and has passed his *eighteenth (18th)* birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a first-class hoisting engineer's license.

(c) Applicants for first or second-class hoisting engineer's license holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the board and is found to be competent to operate hoisting machinery in that classification shall be granted a license in that classification.

(d) Applicants for first or second-class hoisting engineer's license holding a valid first or second-class engineer's license for the operation of boilers, steam machinery and hoisting engines for the state of Montana prior to enactment of this act shall, upon application during a period not to exceed twelve (12) months after enactment of this act, be granted a hoisting engineer's license in that classification."

Section 28. Section 75-8702, R.C.M. 1947, is amended to read as follows:

"75-8702. **Definitions.** Terms used in this chapter are defined as follows:

(1) "domicile" means person's true, fixed, and permanent home and place of habitation;

(2) "emancipated minor" means person under the age of *eighteen (18)* years who supports himself from his own earnings or is married.

(a) A person who received more than twenty-five per cent (25%) of the cost of supporting himself from any person other than an agency of the government shall not be considered an "emancipated minor."

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(3) "minor" means male or female person who has not obtained the age of *eighteen (18)* years.

(4) "qualified person" means person legally qualified to determine his own domicile.

(5) "Resident student" means:

(a) A student who has been domiciled in Montana for one (1) year immediately preceding registration at any unit for any term or session for which resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education shall not alone be sufficient to qualify for residence in Montana.

(b) Any graduate of a Montana high school whose parents, parent, or guardian have resided in Montana at least one (1) full year of the two (2) years immediately preceding his graduation from high school. Such classification shall continue for not more than four (4) academic years if the student remains in continuous attendance at a unit."

Section 29. Section 80-1415, R.C.M. 1947, is amended to read as follows:

"80-1415. **Control over minor so released vested in department of institutions.** The department of institutions has control over a child so released until he attains the age of *eighteen (18)* years, subject, however, to the general jurisdiction of the various courts of Montana for acts committed by such child while under the control of the department."

Section 30. Section 81-407, R.C.M. 1947, is amended to read as follows:

"81-407. **Who may lease—how much and for what length of time.** No persons shall be qualified to lease state lands except one who is the head of a family unless he or she has attained the age of *eighteen (18)* years. Any such person and any association, company or corporation authorized to hold lands under lease may lease state lands, and there may be included under one lease, tracts of lands embracing more than one (1) section. Any such person, association, company or corporation may hold more than one (1) lease to such lands. No lease to agricultural or grazing lands shall be for a period other than five (5) or ten (10) years. Leases for city and town lots shall not exceed five (5) years. When a lease expires or is canceled the commissioner shall immediately so notify the holder of the lease and all persons who have expressed an interest in leasing the land during, or immediately preceding the term of such expired or canceled lease. If the legislature raises the rentals for state grazing

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lands during the term of any leases of grazing land hereafter issued which are not issued as a result of competitive bidding the lessee shall, for the years after such increase becomes effective, pay such increase rental and the terms of grazing leases hereafter issued shall so provide."

Section 31. Section 81-908, R.C.M. 1947, is amended to read as follows:

"81-908. **Who may purchase and how much.** State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens, or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of *eighteen (18)* years. As far as possible to determine the lands shall be sold only to actual settlers or to persons who will improve the same, and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value. No person or corporation shall be entitled to purchase more than one section of state land, and this area shall not include more than one hundred and sixty (160) acres of land susceptible of irrigation. These limitations as to area and irrigableness shall not apply to lands within a federal irrigation project wherein the Congress of the United States of America now or hereafter authorizes water to be furnished to anarea exceeding one hundred and sixty (160) irrigable acres.

State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in this section for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

The title to any state lands which have been heretofore purchased by a sovereign state or a board of trustees or public corporation, agency or political subdivision thereof qualified under the provisions of this act is hereby ratified and confirmed."

Section 32. Section 93-1301, R.C.M. 1947, is amended to read as follows:

"93-1301. **Who competent to act as juror.** A person is competent to act as a juror if:

1. A citizen of the United States of the age of *eighteen (18)* years, who shall have been a resident of the state one (1) year, and of the county ninety (90) days before being selected and returned.

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2. In possession of natural faculties, and of ordinary intelligence and not decrepit.

3. Possessed of sufficient knowledge of the English language.

4. Assessed on the last assessment roll of the county on property belonging to him or her."

Section 33. Section 93-100-2, R.C.M. 1947, is amended to read as follows:

"93-100-2. **Application for change of name—how made.** All applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under *eighteen (18)* years of age, by one of the parents, if living, or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name; and must, if the father of such person be not living, name, as far as known to the petitioner, the near relatives of such person, and their place of residence. Any religious, benevolent, literary, scientific corporation, or any corporation bearing or having for its name, or using or being known by the name of, any benevolent or charitable order or society, may, by petition, apply to the district court of the county in which its articles of incorporation were originally filed, or in which the property of such corporation is situated, for a change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation, and must specify the date of the formation of the corporation, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings shall be had as upon applications for changes of names of natural persons, and no banking corporation hereafter organized shall adopt or use the name of any other banking corporation or association, or of any friendly association."

Section 34. Section 94-2721, R.C.M. 1947, is amended to read as follows:

"94-2721. **Receiver of stolen property.** Every person who for his own gain or to prevent the owner from again possessing his own property buys or receives any personal property, knowing the same to have been stolen, is punishable by imprisonment in the state prison not exceeding five (5) years or in a county jail not exceeding six (6) months; and it is presumptive evidence that such property was stolen if the same consists of jewelry, silver or plated ware or articles of personal ornaments, brass, bronze or

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copper fixtures, fittings or parts of machinery, or electrical supplies, or what is commonly termed junk, if purchased or received from a person under the age of *eighteen (18)* years unless said property is sold by said minor at a fixed place of business carried on by said minor or his employer.

The jurisdiction of a criminal action for receiving stolen property is in any county wherein said property was received or into or through which such stolen property has been brought."

Section 35. Section 94-3702, R.C.M. 1947, is amended to read as follows:

"94-3702. **Failure to keep register.** Every person who carries on the business of a pawnbroker, dealer in second-hand goods, or junk dealer who fails at the time of the transaction to enter in a register kept by him for that purpose, in the English language, the date, duration, amount, and rate of interest of every loan made by him, or an accurate description of the property pledged or sold to him or by him, or the name and residence of the pledger or seller or purchaser, or to deliver to the pledger or seller or purchaser a written copy of such entry, or to keep an account in writing of all sales or purchases made by him, and every pawnbroker, dealer in second-hand goods, or junk dealer who receives goods in pledge or by gift, or purchases the same from any person under the age of *eighteen (18)* years, or from anybody acting as agent for said person, shall be deemed guilty of a misdemeanor, and a conviction thereof shall also work a forfeiture of his license."

Section 36. Section 94-35-106, R.C.M. 1947, is amended to read as follows:

"94-35-106. **Intoxicating liquors—penalty for giving or selling to any person under the age of** *eighteen (18)* **years.** Any person who shall sell, give away or dispose of intoxicating liquor to any persons under the age of *eighteen (18)* years, shall for the first offense be subject to punishment not exceeding five hundred dollars ($500) fine or by imprisonment not to exceed six (6) months in the county jail, or both such fine and imprisonment, and upon conviction for the second and subsequent offenses he shall be subject to punishment by fine of not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) or by imprisonment in the state penitentiary for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment. Nothing herein contained shall prevent the furnishing of intoxicating liquor to a person under *eighteen (18)* years of age upon any physician's prescription where authorized by the laws of this state or the United States, nor the furnishing of wine for sacramental purposes."

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Section 37. Section 94-35-106.2, R.C.M. 1947, is amended to read as follows:

"94-35-106.2. **Possession of beer or liquor by minor—misdemeanor.** Any person who shall not have reached the age of *eighteen (18)* years and who shall have in his or her possession beer or liquor, shall be guilty of a misdemeanor."

Approved: March 6, 1973.

CHAPTER NO. 95

An Act Creating a Judicial Standards Commission and Specifying the Composition and the Qualifications of the Members in Compliance with Article VII, Section 11 of the 1972 Montana Constitution.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is created a judicial standards commission consisting of five (5) members as follows:

(1) two (2) district court judges, from different judicial districts, elected by the district judges under an elective procedure initiated by and conducted by the supreme court and the two (2) so elected certified as to such election by the chief justice of the supreme court which for the purpose of the language of this act shall be considered as an appointment.

(2) one (1) attorney who has practiced law in this state for at least ten (10) years, appointed by the supreme court.

(3) two (2) citizens from different congressional districts who are not attorneys or judges of any court, active or retired, appointed by the governor.

Section 2. (1) The first appointments made under this act are as follows:

(a) the supreme caourt shall designate by certificate of the chief justice one (1) district court judge to serve for four (4) years, and one (1) to serve for two (2) years;

(b) the attorney shall serve for four (4) years; and

(c) the governor shall appoint one (1) citizen to serve for four (4) years, and one (1) to serve for two (2) years.

(2) Thereafter, all terms shall be for four (4) years.

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Section 3. (1) Commission membership terminates if a member ceases to hold the position that qualified him for appointment.

(2) In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

Section 4. A commission member is not entitled to compensation for his services but is entitled to actual expenses incurred in the performance of his duties.

Section 5. (1) The commission, or any citizen of the state may upon good cause shown, initiate an investigation of any judicial officer in the state by filing a verified written complaint with the commission.

(2) The commission, after such investigation as it considers necessary and upon the finding of good cause, may:

(a) order a hearing to be held before it concerning the censure, suspension, removal or retirement of a judicial officer; or

(b) request the supreme court to appoint one (1) or more special masters, who are judges of courts of record, to hear and take evidence and to report to the commission.

(3) If after hearing or after considering the record and report of the masters, the commission finds the charges true, it shall recommend to the supreme court the censure, suspension, removal or retirement of the judicial officer.

Section 6. (1) All papers filed with, and proceedings before the commission or masters are confidential.

(2) The filing of papers with and the testimony given before the commission or masters is privileged communication.

(3) The commission shall make rules for the conduct of its affairs and provide for the confidentiality of its proceedings.

Section 7. (1) The supreme court shall review the record of the proceedings and shall make such determination as it finds just and proper and may:

(a) order censure, suspension, removal or retirement of a judicial officer; or

(b) wholly reject the recommendation.

Section 8. A judicial officer who is a member of the commission or of the supreme court shall not participate in any proceeding involving his own censure, suspension, removal, or retirement or that of a relative within the sixth degree of consanguinity or that of the spouse of such a relative.

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Section 9. A judge is disqualified from acting as a judge, without loss of salary, while there is pending:

(1) an indictment or an information charging him with a crime punishable as a felony under Montana or federal law, or

(2) a formal proceeding before the commission for his removal or retirement.

Section 10. (1) On recommendation of the commission, the supreme court may suspend a judicial officer from office without salary when he pleads guilty or no contest or is found guilty of a crime punishable as a felony under Montana or federal law, or of any other crime involving moral turpitude.

(2) If his conviction is reversed, suspension terminates, and he shall be paid his salary for the period of suspension.

(3) If he is suspended and his conviction becomes final, the supreme court shall remove him from office.

Section 11. (1) Upon an order for retirement, the judicial officer shall be retired with the same rights and privileges as if he retired pursuant to statute.

(2) Upon an order for removal, the judicial officer shall be removed from office and his salary shall cease from the date of the order. He shall be ineligible for any other judicial office and pending further order of the court is suspended from practicing law.

Approved: March 5, 1973.

CHAPTER NO. 96

An Act to Amend Section 82-2202, 82-2203, 82-2208, 82-2211 and 82-2212, R.C.M. 1947, to Transfer the Functions of the Secretary of State Relating to Printing and Distribution of the House and Senate Journals and Session Laws to the Legislative Services Division of the Legislative Council; Deleting from Section 82-2210, R.C.M. 1947, References to Sidenoting; Repealing Section 82-2204, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82-2202, R.C.M. 1947, is amended to read as follows:

"82-2202. **Duties of secretary of state.** In addition to the duties prescribed by the constitution, it is the duty of the secretary of state:

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1. To attend at every session of the legislative assembly, for the purpose of receiving bills and resolutions thereof, and to perform such other duties as may be devolved upon him by resolution of the two houses, or either of them.

2. To keep a register of and attest the official acts of the governor.

3. To affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required.

4. To record in proper books all conveyances made to the state, and all articles of incorporation filed in his office.

5. To receive and record in proper books the official bonds of all the state officers, and then deliver the originals to the state treasurer.

6. To take and file in his office receipts for all books distributed by him, and to direct the county clerk of each county to do the same.

7. To certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor.

8. To furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office.

9. To notify in writing, the county attorney of the proper county of the failure of any officer in his county to file in his office the sworn statement of fees received by such officer.

10. To present to the legislative assembly, at the commencement of each session thereof, a full account of all purchases made and expenses incurred in furnishing fuel, lights and stationery.

11. To keep a fee book, in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein.

12. To file in his office descriptions of seals in use by the different state officers, and furnish such officers with new seals whenever required.

13. To discharge the duties of member of the state board of

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examiners, of member of the state board of prison commissioners, of member of the state board of land commissioners and all other duties required of him by law.

14. To report to the governor, at the time prescribed in section 59-702 a detailed account of all official actions since his previous reports, and accompanying the report with a detailed statement, under oath, of the manner in which all appropriations for his office have been expended; and to report as provided in section 59-705.

15. To receive, designate, and record trade-marks as provided in section 85-102.

16. He must distribute the bound volumes of the decisions of the supreme court, in the manner provided by section 82-2007.

17. To report annually to the legislative services division of the legislative council all changes of names received pursuant to section 93-100-5, for publication in the session laws.

18. To report annually to the legislative services division of the legislative council all watercourse name changes received pursuant to section 93-100-9 for publication in the session laws."

Section 2. Section 82-2208, R.C.M. 1947, is amended to read as follows:

"82-2208. **Exceptions to application of law.** The provisions of this act shall not apply to the decisions of the supreme court, the contributions of the historical society, *session laws or house and senate journals,* nor to bills printed for the legislative assembly, or other printing for its use during its session, not appropriate to be put in pamphlet form."

Section 3. There is a new section in Title 43, chapter 7, numbered 43-711.1, R.C.M. 1947, which reads as follows:

43-711.1. **Printing of the house and senate journals and session laws.** In addition to the duties prescribed in section 43-711, the legislative services division of the legislative council shall deliver to the printer entitled to the same, at the earliest day practicable after the final adjournment of each session of the legislative assembly, copies of all laws, resolutions, and journals, kept, passed, or adopted at such session with proper indexes to the same.

Section 4. Section 82-2203, R.C.M. 1947, is renumbered 43-711.2, and is amended to read as follows:

"43-711.2 **Distribution of senate and house journals and session laws.** Immediately after the senate and house journals and

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the session laws mentioned in section *43-711.1* are bound, the *legislative services division of the legislative council* must distribute the same.

It shall distribute the house and senate journals as follows:

1. To the county clerk of each county one copy of *each* for the use of the county.

2. To the state historical library such number of copies of *both,* not exceeding 150 of each, as may be required by it for purposes of distribution and exchange; to the state law librarian, two copies of each for the use of said library, and such additional copies as may be necessary for the purposes of exchange; and to the library of Congress, two copies of each.

3. To the lieutenant governor, each member of the legislative assembly, secretary of the senate and chief clerk of the house of representatives at the session at which the journals were adopted, one copy *of each.*

It shall distribute the session laws as follows:

1. To each department of the government at Washington, and of the government of this state, one copy.

2. To the library of Congress, eight copies; and to the state library, two copies.

3. To the state historical and miscellaneous library, two copies; to the state law librarian, four copies for the use of said state law library.

4. To the law libraries and the legislative reference libraries of each of the states and territories such number of copies as are given by them in exchange with the Montana state law library and the legislative reference libraries.

5. To the members of Congress, to the United States district judge, to each of the judges of the supreme and district courts, and to each of the state officers of the state, one copy.

6. To the lieutenant governor, each member of the legislative assembly, secretary of the senate, and chief clerk of the house of representatives at the session at which laws and journals were adopted, one copy.

7. To each of the incorporated colleges of the state and to each unit of the state university and institutions, one copy; to the law librarian of the state of Montana as many copies as may be

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required by him for exchange with libraries and institutions maintained by other states, territories and public libraries.

8. To the county clerk of each county, three copies for the use of the county.

9. To each county attorney, and to each clerk of the district court, one copy."

Section 5. Section 82-2210, R.C.M. 1947, is renumbered 43-711.3 and amended to read as follows:

"*43-711.3* **Publication of laws—index.** The *legislative services division of the legislative council,* in pursuance of section *43-711.1,* shall cause such laws as are therein specified, except resolutions, memorials, and bills appropriating money, to be printed with the heading of each law,

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numbered from 1 upward, using Arabic numerals for such numbering, and *it* shall omit from the laws the statement "Senate Bill No. . . ." and "House Bill No. . . . ." and hereafter reference to the laws of any legislative session may be made as follows: "Chapter . . . . (giving number) of the laws of . . . ." (giving the year in which same was enacted). Such laws shall be published in their numerical order, from 1 upward, as same have been filed in *the office of the secretary of state,* and the chapter number shall appear as part of each page heading; provided, that resolutions, memorials, and bills appropriating money shall be printed in the latter part of the volume containing the said laws, in the form and manner heretofore practiced in publishing such laws; and provided further, in all enrolled bills containing amendments to existing statutes, the new parts having been designated by underlining, shall be printed in italics. The *legislative services division of the legislative council* shall also have prepared and published with said laws, and bound in the same volume, a suitable index of the same, and an additional index showing what sections of the several codes of this state have been amended, repealed, altered, or changed by any of the laws published in that volume, which shall be known and designated as the 'Code Index'."

Section 6. Section 82-2211, R.C.M. 1947, is renumbered 43-711.4, and amended to read as follows:

"*43-711.4.* **Description of county boundaries included in session laws.** It shall be the duty of the *legislative services division of the legislative council* to include in the *published* session laws of the state of Montana a description of the county boundaries of all new

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counties of the state of Montana created by petition and election, commencing with counties so created on and after January 1, 1921, inserting in each of said session laws such new counties as have been so created since the publication of the acts of the previous session."

Section 7. Section 82-2212, R.C.M. 1947, is renumbered 43-711.5, and amended to read as follows:

"43-711.5. **Expenses incurred, how paid.** The expenses incurred by the *legislative services division of the legislative council* in carrying into effect the provisions of sections *43-711.1 to 43-711.4* inclusive must be paid out of any moneys specially appropriated for the purpose."

Section 8. Section 82-2204, R.C.M. 1947, is repealed.

Approved: March 5, 1973.

CHAPTER NO. 97

An Act Amending Section 81-433, R.C.M. 1947, Providing for an Increase in the Grazing Fee.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 81-433, R.C.M. 1947, is amended to read as follows:

"81-433. **Formula for fixing annual rental.** When used in this section:

''Animal unit'' means one cow, one horse, five sheep or five goats.

''Animal-unit-month carrying capacity'' means that amount of natural feed necessary for the complete subsistence of one animal unit for a period of one (1) month.

The state board of land commissioners shall establish the per annum rental rate per section of all grazing lands which are the property of the state of Montana upon the animal-unit-month basis as hereinafter provided.

In fixing the minimum annual rental per section, the following formula shall be used:

The base rental shall be computed by multiplying *fifty cents ($.50)* plus *three (3)* times the average price per pound of beef

cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(a) The minimum annual rental for grazing lands with an annual carrying capacity of more than fourteen (14) and less than twenty (20) animal units per section is the base rental.

(b) The minimum annual rental for grazing lands with an annual carrying capacity of more than nineteen (19) animal units per section is ten cents (10¢) more than the base rental.

(c) The minimum annual rental for grazing lands with an annual carrying capacity of less than fifteen (15) animal units per section is ten cents (10¢) less than the base rental.

The carrying capacity of the land, to be used in the above formula, shall be in accordance with the determinations of the commissioner of state lands and investments made pursuant to section 81-404.

The average price per pound of beef cattle on the farm in Montana shall be taken from statistics published by the bureau of agricultural economics of the United States department of agriculture current at the time of computation of the rental, or from other reliable sources current at such time."

Approved: March 5, 1973.

CHAPTER NO. 98

An Act to Amend Section 71-235, R.C.M. 1947, by Increasing the Relatives Contribution Scale to Present Income and Consumer Price Levels.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 71-235, R.C.M. 1947, is amended to read as follows:

"71-235. **Living relatives—jointly and severally liable—scale of contribution.** The living relatives of each needy person, named in this act, shall be and they hereby are made jointly and severally liable in the order named in section 71-233 to such needy person for the monthly amounts of money determined in accordance with the following scale, to wit:

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RELATIVES CONTRIBUTION SCALE

A.	B. Number of persons dependent upon income exclusive of applicant									
Net monthly income of responsible relatives in one family in dollars	1	2	3	4	5	6	7	8	9	10 and over
	C. Maximum required monthly contribution.									
Under 304	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*
305 to 399	*22*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*
400 to 489	*43*	*14*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*
490 to 619	*72*	*43*	*29*	*22*	*7*	*0*	*0*	*0*	*0*	*0*
620 to 739	*101*	*72*	*58*	*50*	*36*	*29*	*14*	*0*	*0*	*0*
740 to 869	*130*	*101*	*86*	*79*	*65*	*58*	*43*	*29*	*14*	*0*
870 to 1024	*144*	*130*	*115*	*108*	*94*	*86*	*72*	*58*	*43*	*29*
1025 to 1179	*144*	*144*	*144*	*144*	*130*	*123*	*108*	*94*	*79*	*65*
1180 to 1339	*144*	*144*	*144*	*144*	*144*	*144*	*144*	*130*	*115*	*101*
1340 and up	*144*	*144*	*144*	*144*	*144*	*144*	*144*	*144*	*144*	*130*

For the purposes of this act: (1) A needy person is one who is eligible for public assistance under the laws of this state; (2) "Net monthly income" shall be deemed to mean one-twelfth (1/12) of the difference between the net income for the taxable year as the term net income is defined in section 84-4901, subsection ten (10), and the state income tax paid as determined by the state income tax return filed during the current year.

In those cases where both spouses classify as responsible relatives of needy persons during the same period of time, the liability for contribution of each of said spouses during that time shall be considered to be one-half (½) of the amount shown in the scale established by this act."

Approved: March 5, 1973.

CHAPTER NO. 99

An Act Providing for the Automatic Disincorporation of Montana Cities or Towns and Procedures for Disincorporation by Petition in Cities or Towns; Providing for Elections to Determine the Question; Establishing Procedures for Managing Existing Debt; Defining the Effect of Disincorporation; and repealing Sections 11-306 and 11-307, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. If the governing body of any city or town incorporated under the laws of the state of Montana ceases to exist or fails to function for period of two (2) years, the city or town shall be disincorporated in the manner set forth in this act.

Section 2. (1) Any city or town may be disincorporated in the manner hereafter provided.

(2) If the qualified electors of a city or town equal in number to twenty per cent (20%) of the number of voters voting at the last regular municipal election petition the board of county commissioners of the county where the city or town is situated to disincorporate the city or town, the board of county commissioners shall order within sixty (60) days that a special election be held within the city or town on the question of disincorporating the city or town. The day for holding the election shall not be less than thirty (30) days nor more than sixty (60) days after the board of county commissioners orders the election.

(3) Notice of the election shall be published once each week for four (4) consecutive weeks and shall state that the question of disincorporation of the city or town will be submitted to the qualified electors of the city or town on the designated day.

Section 3. The form of the ballot is:

☐ "For the disincorporation of .....
(insert name of city or town)

☐ "Against the disincorporation of .....
(insert name of city or town)."

Section 4. The election is conducted in the same manner as a regular city or town election except that the election officials are appointed by the board of county commissioners. The election returns are made to the board of county commissioners and canvassed in the same manner as are general election returns.

Section 5. If it is found by the canvass of the votes that less than sixty per cent (60%) of the votes cast were in favor of disincorporation, the county commissioners shall declare the petition for

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disincorporation denied, in which case no other election may be held on the question of disincorporating said city or town until after the expiration of two (2) years from the date of the election.

Section 6. In case the canvass reveals that sixty per cent (60%) or more of all the votes cast were in favor of the disincorporation, the county commissioners shall, under their hands make and file in their office, and cause to be entered upon their proceedings, an order that the petition for disincorporation be granted, and declaring that the city or town is disincorporated. The order takes effect within sixty (60) days following the date of the order. A certified copy of the order shall be sent to the Montana secretary of state and the head of the state department of intergovernmental relations.

Section 7. In cases where a city or town has been disincorporated by virtue of the provisions of section 1 of this act, the county commissioners shall file in their office an order that the disincorporation be granted. This order takes effect within sixty (60) days following the date of the order. A certified copy of the order shall be sent to the state officials named in section 6 above.

Section 8. Upon receiving a certified copy of the order of disincorporation, the director of the department of intergovernmental relations shall certify a current statement of the financial condition of the disincorporating city or town to the board of county commissioners. The statement shall include, but not be limited to, a determination of all assets of the city or town, including any current or delinquent utility accounts and/or taxes receivable and a statement of all city or town indebtedness, including any revenue or general obligation bonds, special improvement district obligations outstanding, contracts payable, all other obligations of the city, and a schedule for the repayment of indebtedness. Under the supervision of the director of the department of intergovernmental relations or his agent, the city or town treasurer shall draw a treasurer's check for the amount of unencumbered cash in the city or town treasury, the check shall be made payable to and delivered to the county treasurer of the county in which the disincorporating city or town is situated. The county treasurer shall immediately place said money in a special fund, to be drawn upon as provided in this act.

Section 9. Upon the disincorporation of a city or town, every public officer of the city shall immediately turn over, to the board of county commissioners of the county in which the city or town is situated, all public property of every nature and description in their possession. Provided, however, that all court records of the police court, if any, shall be transferred to the nearest justice of the peace. The justice of the peace has the authority to execute and complete all

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unfinished business. All reports and remittances of fines and forfeitures are made in the same manner as that prescribed for justices of the peace.

Section 10. The disincorporation of a city or town does not invalidate or affect any right, penalty or forfeiture accruing to the city or town, nor invalidate or affect any contract entered into or imposed upon the corporation, but all the contracted indebtedness and obligations remain unimpaired by reason of the disincorporation of the city or town. The board of county commissioners of the county succeeding the disincorporated city or town shall provide for the payment and discharge in good faith of all the indebtedness and obligations according to the tenor of the contract or indenture agreement by which they were contracted or the indebtedness incurred, and for the collection of any indebtedness due the city or town. All instruments for the repayment of indebtedness are drawn, by order of the board of county commissioners, on the fund provided in section 8 of this act.

Section 11. If, at any time after the disincorporation of a city or town, it is found that there is not sufficient money in the treasury to the credit of the special fund of section 8 with which to pay any indebtedness of the corporation, the board of county commissioners has the power, and it is its duty to levy and collect from the territory formerly included within the city or town, a tax or taxes sufficient in amount to pay the indebtedness of the corporation as the same shall become due. The tax or taxes, assessments and collections shall be made in the same manner and at the same time that other taxes of the county are levied and collected and are an additional tax upon the property included within said territory, or portions thereof, for the payment of said debts. All moneys paid into the county treasury under the provisions of this act shall be placed to the credit of the special fund.

Section 12. If, after payment of the debts of the corporation, and the liquidation, where possible, of tangible assets, any surplus shall remain in the hands of the county treasurer to the credit of the special fund. Money remaining shall be transferred to the county general fund. Nothing in this section is intended to conflict with the provisions of section 10.

Section 13. The board of county commissioners shall make provisions for the collection of the amounts due to a corporation and for the closing up of its affairs, and any act or acts, necessary for that purpose and not otherwise provided shall, upon order of the board of county commissioners, be performed by the officer or officers performing similar duties for the county, as if it had been performed by the proper officer of the city or town, before disin-

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corporation. The county shall succeed to and possess all rights of the corporation to indebtedness and has power to sue for or otherwise collect any debts in the name of the county.

Section 14. All costs and expenses of ascertaining information and all other costs and expenses incurred by the board of county commissioners in the execution of the powers and duties of managing the affairs of the disincorporated city or town, provided for in sections 1 through 13, shall be paid out of the special fund in the county treasury.

Section 15. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. Sections 11-306 and 11-307, R.C.M. 1947, are repealed.

Approved: March 5, 1973.

CHAPTER NO. 100

An Act Removing References to the 1889 Constitution from the Codes and Amending or Deleting other Statutory Language to make it Comply with the 1972 Constitution; Amending Sections 11-966, 11-1302, 11-2216, 11-3229, 16-2008, 16-2010, 16-2501, 16-2504, 16-2505, 16-3203, 19-103.1, 23-3012, 32-2601, 32-3802, 32-3804, 36-203, 36-205, 40-4705, 41-1603, 43-508, 46-1903, 59-203, 59-413, 60-125, 66-2604, 72-102, 75-5701, 75-5801, 75-5802, 75-6203, 75-6410, 75-7104, 75-8113, 79-1201, 79-1206, 79-1211, 79-1212, 79-1215, 79-2411, 81-101, 81-905, 81-1001, 81-1102, 81-1712, 82-501, 82-3801, 82-3802, 82-3803, 84-404, 84-701, 84-1901, 84-3804, 84-4713, 84-5214, 91-520, 93-4215 and 93-4216, R.C.M. 1947; and Repealing Sections 3-101.1, 4-348, 16-405, 16-2407, 23-2701.1, 41-1609, 75-6410.1, 84-211, and 84-707, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-966, R.C.M. 1947, is amended to read as follows:

"11-966. **Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.** The city or town council has power: (1) To contract an indebtedness on behalf of a city or town, upon the credit

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thereof, by borrowing money or issuing bonds for the following purposes, to-wit: Erection of public buildings, construction of sewers, sewage treatment and disposal plants, bridges, docks, wharves, breakwaters, piers, jetties, moles, waterworks, reservoirs and reservoir sites, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, street and other equipment, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, to acquire, open and/or widen any street and to improve the same by constructing, reconstructing and repairing pavement, gutters, curbs and vehicle parking strips and to pay all or any portion of the cost thereof, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed five per centum (5%) of the total value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewerage system, until the proposition has been submitted to *a* vote and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt.

(2) The additional indebtedness authorized, including all indebtedness theretofore contracted, which is unpaid or outstanding, for the construction of a sewerage system, or for the procurement of a water supply, or for both such purposes, shall not exceed in the aggregate ten per centum (10%) over and above the five per centum (5%) heretofore referred to, of the total valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes; and, provided further, that the above limit of five per centum (5%) shall not be extended, unless the question shall have been submitted to a vote and carried in the affirmative by a vote of the majority of *the electors* who vote upon such question.

(3) It is further provided, that whenever a franchise has been granted to, or a contract made with, any person or persons, corporation or corporations, and such person or persons, corporation or corporations, in pursuance thereof, or otherwise, have estab-

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lished or maintained a system of water supply, or have valuable water rights or a supply of water desired by the city or town for supplying the said city or town with water, the city or town granting such franchise or entering in such contract or desiring such water supply, shall, by the passage of an ordinance, give notice to such person or persons, corporation or corporations, that it desires to purchase the plant and franchise and water supply of such person or persons, corporation or corporations, and it shall have the right to so purchase the said plant or water supply, upon such terms as the parties agree; in case they cannot agree, then the city or town shall proceed to acquire the same under the laws relating to the taking of private property for public use, and any city or town acquiring property under the laws relating to the taking of private property for public use, shall make payment to the owner or owners of the plant or water supply of the value thereof legally determined, within six (6) months from and after final judgment is entered in the condemnation proceedings. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure an appropriate water rights and title to the same, and the necessary real and personal property to make said rights and supply available, by purchase, appropriation, location, condemnation, or otherwise.

(4) Cities and towns shall have jurisdiction and control over the territory occupied by their public works, and over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works, and also over the source of stream for which water is taken, for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose the city or town shall be authorized to condemn private property in the manner provided by law, and shall have authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement."

Section 2. Section 11-1302, R.C.M. 1947, is amended to read as follows:

"11-1302. **Allowance and payment of claims—cash basis.** All accounts and demands against a city or town must be submitted to the council, and if found correct, must be allowed and an order made that the demand be paid, upon which the mayor must draw a warrant upon the treasurer in favor of the owner, specifying for what purpose and by what authority it is issued, and out of what funds it is to be paid, and the treasurer must pay the same out of the proper

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fund; provided, however, that in case the total indebtedness of a city or town has reached the limit of *five per cent (5%) of the value of taxable property therein*, it shall be lawful for, and said city or town is hereby authorized and empowered, to thereafter manage and conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the city or town out of the cash in the city or town treasury and derived from its current revenues, under such restrictions and regulations as the city or town council may by ordinance prescribe; and in the event that payment be made in advance, the city or town shall have power to require a cash deposit as collateral security and indemnity, equal in amount to such payment, and may hold the same as a special deposit with the city treasurer, in package form, as a pledge for the fulfillment and performance of the contract or obligation for which said advance shall have been made; and provided, further, that before the payment of the current expenses above mentioned, the city or town council shall first set apart sufficient moneys to pay the interest upon its legal, valid, outstanding bonded indebtedness and any sinking funds therein provided for, and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims."

Section 3. Section 11-2216, R.C.M. 1947, is amended to read as follows:

"11-2216. **Sewer systems.** (1) A sewer system may be established in a city or town, which system may be divided into public, district and private sewers.

Public sewers may be established and constructed along the principal course of drainage at such times, to such an extent, of such dimensions and material, and under such regulations as may be prescribed by the council; and there may be constructed such branches and extensions of sewers already constructed, or to be constructed, as may be considered expedient.

(2) To defray the cost of such public sewers, the city or town council may appropriate moneys therefor from the general or sewer fund, or by availing itself of moneys derived from a bond issue authorized by the constitution and laws of the state. It is further provided that when a public or main sewer also serves as a district sewer, the city council may assess the property bordering or abutting upon such public sewer, either at the time of its construction or at any future time, for an amount equal to the estimated cost of such district sewer capable of accommodating such property.

(3) And /or to provide such sewer fund, and/or to provide for the retirement of such bonds, and/or the payment of the interest on such bonds, and/or for any purpose herein mentioned, the

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city council shall, upon being petitioned by five (5) per cent of the qualified electors, at the annual municipal election or at any special election called for that purpose, submit to a vote to the qualified electors, the question whether or not the city council may establish and collect rentals for the use of such sewer system and may fix scale of such rentals and prescribe the manner and time at which such rentals shall be paid, and if a majority of votes is cast in favor of such proposition then the city or town council may establish and collect rentals for the use of any such sewer system and may fix the scale of such rentals and prescribe the manner and time at which such rentals should be paid and to change such scale of rentals from time to time as may be deemed advisable; providing, that the total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance and repair of any such sewer system. For the purpose of making such rental charges equitable, property benefited thereby may be classified, taking into consideration the volume and character of sewage or waste and the nature of the use made of such sewage facilities. Said rentals shall be collected or taxed against the property in like manner as water rentals are collected and taxed, or by such procedure as may be prescribed by the city or town council, the revenues in this paragraph provided shall be in addition to and not exclusive of other revenues which may be now legally collected for sewer payment.

(4) The funds received from the collection of sewer rentals shall be kept as a separate and distinct fund by the city treasurer, subject only to disbursement by order of the council. This fund shall be used for (1) the payment of the cost of management, (2) maintenance, (3) operation and (4) repair of the sewage system, including treatment and disposal works, (5) for the creation of a sinking fund for the retirement of any indebtedness, (6) for the payment of interest on any such indebtedness, and any surplus in such fund may be used for the enlargement or replacement of the same and for the payment of the interest on any debt incurred for the construction of such sewage system, including sewage pumping, treatment and disposal works, and for retiring such debt, but shall not be used for the extension of a sewage system to serve unsewered areas or for any purpose other than one or more of those above specified.

(5) Any twenty-five (25) or more *electors* of such a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable or unjustly discriminatory, and the public service commission shall, upon public hearing thereon, file its findings and determination, stating therein

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in what respect, if any, said rental charges are unreasonable or unjustly discriminatory, and the municipality at interest shall forthwith readjust its rental charges so as to remove any unreasonable or unjustly discriminatory features so found by the public service commission.

(6) It is further provided that all the provisions of this act referring to sewer rentals, shall apply to special improvement districts for the constructing and maintaining and operating of sanitary sewers and storm sewers, as provided for in chapter 133, Laws of 1929 and the powers herein conferred on councils shall be and are hereby conferred on the several boards of county commissioners for the purposes of said chapter 133, Laws of 1929—in so far as the same relates to sewers."

Section 4. Section 11-3229, R.C.M. 1947, is amended to read as follows:

"11-3229. **Bribery—false answers concerning qualifications of elector—voting by disqualified person.** Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person willfully voting or offering to vote at such election, who has not met the residency requirement of the state of Montana, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined a sum of not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or be imprisoned in the county jail not less than ten (10) nor more than ninety (90) days, or both such fine and imprisonment."

Section 5. Section 16-2008, R.C.M. 1947, is amended to read as follows:

"16-2008. **Board of county commissioners may issue bonds for certain purposes.** The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate and sell coupon bonds on the credit of the county, as hereinafter in this act more specifically provided, for any of the following purposes:

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(a) For the purpose of acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful authority to acquire or erect, control and maintain; for the purpose of acquiring land for any other public use or activity within the county, under its control and authorized by law.

(b) For the purpose of constructing, erecting or acquiring by purchase necessary public buildings within the county, under its control and authorized by law, making additions to and repairing buildings and for the purpose of furnishing and equipping the same, and for the purpose of building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water.

(c) For the purpose of enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line.

(d) For the purpose of funding, paying and retiring outstanding county warrants lawfully issued against the county general fund, road fund, bridge fund or poor fund, when there is not sufficient money in the fund against which such warrants are drawn to pay and retire such warrants and the levying of taxes sufficient to pay and retire such warrants within a period of three (3) years would, in the judgment of the board of county commissioners, work a hardship and be an undue burden upon the taxpayers of the county.

(e) For the purpose of refunding, paying and redeeming optional, redeemable or maturing bonds when there are not sufficient funds available to pay such bonds and it is deemed for the best interests of the county to refund such bonds.

(f) For the purpose of funding, paying and retiring outstanding seed grain warrants lawfully issued under the provisions of section 4651, and for the purpose of funding, paying and retiring outstanding special relief warrants lawfully issued under the provisions of section 4692, when there is not sufficient money available to pay such warrants and the levying of special taxes sufficient to pay the same within a period of three (3) years would, in the judgment of the board of county commissioners, work a hardship and be an undue burden upon the taxpayers of the county.

(g) For the purpose of funding, paying in full or compromising, settling and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, when there are not sufficient funds available to pay such judgment and when sufficient money cannot be raised to satisfy such judg-

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ment by an annual tax levy of ten (10) mills levied on all the taxable property within the county through a period of three (3) years.

The resolution providing for the issue of such bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement which may have been entered into between the board of county commissioners and the judgment creditor.

(h) Whenever the total indebtedness of a county exceeds five per centum (5%) of the value of the taxable property therein and the board of county commissioners of said county finds and determines that the county is unable to pay and discharge such indebtedness in full, the said board of county commissioners shall have the power and authority to negotiate with the holders of the bonds of said county for an agreement or agreements whereby said bondholders agree to accept less than the full amount of such bonds and the accrued unpaid interest thereon in full payment and satisfaction thereof, to enter into such agreement or agreements and to issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series if the circumstances so require and each series may be either amortization bonds or serial bonds.

The plan agreed upon between the board of county commissioners and the bondholders shall be embodied in full in the resolution providing for the issue of such bonds."

Section 6. Section 16-2010, R.C.M. 1947, is amended to read as follows:

"16-2010. **Limitation on amount of bonds—issuance in excess of limitations void.** No county shall issue bonds for any purpose which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per centum (2½%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the issuance of such bonds; provided, however, that a county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per centum (2½%), but will not exceed five per centum (5%) of the value of such taxable property, when necessary to do so for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes; provided, however, that this act shall not be construed to extend limitations on bonded indebtedness for county high school purposes, as fixed by section 75-4114, and acts amendatory thereof; and further pro-

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vided, that the foregoing limitations shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932. All bonds issued by any county in excess of the limitations herein fixed shall be null and void."

Section 7. Section 16-2501, R.C.M. 1947, is amended to read as follows:

"16-2501. **Consolidation of county offices—petitions—time for filing—contents.** At any time not later than seven (7) months before the date of any general election at which any of the county officers of this state are to be elected, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of county commissioners of such county. Said petition shall be addressed to the board of county commissioners of such county, shall set forth and state the reasons why such consolidation is believed by the petitioners to be necessary, desirable or for the best interests of the taxpayers of the county, and shall be signed by not less than twenty-five per centum (25%) of the qualified electors of such county whose names appear on the registration records thereof, and each person signing such petition shall place after his name his post-office address and voting precinct."

Section 8. Section 16-2504, R.C.M. 1947, is amended to read as follows:

"16-2504. **Commissioners' right to consolidate offices without petition not limited.** Nothing herein contained shall be deemed as limiting in any manner the discretion of the county commissioners to consolidate the several offices without the filing of the petition provided for in this act."

Section 9. Section 16-2505, R.C.M. 1947, is amended to read as follows:

"16-2505. **Board's order of consolidation to be published.** Whenever a board of county commissioners shall make an order consolidating two or more of the county offices such board shall enter such order in full on its minutes of proceedings and shall cause such order to be published in a newspaper of general circulation printed and published in said county for a period of six successive weeks next following the date of the making and entry of such order."

Section 10. Section 16-3203, R.C.M. 1947, is amended to read as follows:

"16-3203. **Election — term — qualifications.** There shall be

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elected in and for each county of the class named in the preceding section, at the general election to be held in November, 1892, and quadrennially thereafter, some person to serve as county auditor of the county for which he shall be elected for the term of four (4) years, and until his successor shall be elected and qualified, the term to begin on the first Monday in January succeeding his election. No person shall be eligible to the office of county auditor of any county within the state who shall not have arrived at the age of voting and who shall not have been for at least two (2) years next preceding his election, a bona fide resident of the county for which he shall be elected or appointed."

Section 11. Section 19-103.1, R.C.M. 1947, is amended to read as follows:

"19-103.1. **Printing defined.** As used in the laws of the state of Montana, printing is the act of reproducing a design on a surface by any process."

Section 12. Section 23-3012, R.C.M. 1947, is amended to read as follows:

"23-3012. **Lists of registered electors—precinct register.** Immediately after registration is closed, the registrar shall prepare lists of all registered electors. He shall also prepare a precinct register for each precinct and deliver it to the judges of election prior to the opening of the polls."

Section 13. Section 32-2601, R.C.M. 1947, is amended to read as follows:

"32-2601. **Distribution and use of proceeds of gasoline dealers' license tax.** All money received in payment of license taxes under the provisions of sections 84-1845 to 84-1855, except those amounts paid out of the state board of equalization's suspense account for gasoline tax refund shall be used and expended as provided in this section. So much of such money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by section 79-410. The legislative assembly hereby finds as a fact that the principal and interest and reserve requirements of bonds so authorized are a necessary cost of administering laws under which gasoline license taxes are derived, payment of highway obligations, and cost of construction, reconstruction, maintenance and repair of public highways, roads, streets, and bridges. Subject to the foregoing provision, six-tenths of one per cent (.6%) of all such money shall be deposited in the state

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park account in the earmarked revenue fund. All of the remainder of such money shall be used and expended by the state highway commission on the federal-aid highways in this state selected and designated under the provisions of the Federal-Aid Act, approved July 11, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to said federal highway system of federal-aid roads where such county seat is not on said system, and on such other roads as have been or may be authorized by the laws of Montana, and for collection of the license taxes and the enforcement of the Montana highway code, pursuant to the provisions of article XII, section 1b of the constitution of the state of Montana. It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in accordance with the provisions of sections 32-2605 through 32-2607; provided that nothing in this act shall be construed to conflict with said federal-aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the bureau of public roads for the purpose of maintaining national park approach roads in Montana.

Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed, except for the payment of refunds as provided in section 84-1818, R.C.M. 1947. The legislative assembly hereby finds as a fact that of all the fuel sold in the state of Montana for consumption in internal combustion engines, not less than six-tenths of one per centum (.6%) is used for propelling boats on waterways of this state."

Section 14. Section 32-3802, R.C.M. 1947, is amended to read as follows:

"32-3802. **Negotiations for refunding.** (1) Whenever the total indebtedness of a county exceeds five per cent (5%) of the value of the taxable property therein and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) Negotiate with the bondholders for an agreement or agreements whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof.

(b) Enter into such agreement or agreements.

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(c) Issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series and each series may be either amortization or serial bonds.

(2) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds."

Section 15. Section 32-3804, R.C.M. 1947, is amended to read as follows:

"32-3804. Limitation on amount of bonds—issuance in excess of limitations void. (1) Except as otherwise provided hereafter and in section 16-2010, no county shall issue bonds which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per cent (2½%) of the value of the taxable property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per cent (2½%), but will not exceed five per cent (5%) of the value of such taxable property, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) All bonds issued by any county in excess of the limitations herein fixed shall be null and void, except that the limitations shall not apply to refunding bonds issued to pay or retire county bonds lawfully issued prior to January 1, 1932."

Section 16. Section 36-203, R.C.M. 1947, is amended to read as follows:

"36-203. **Conciliation court — judges — budget — conciliation counselors — probation officers — proceedings confidential.** (1) **Excercise of Jurisdiction.** Each district court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court."

(2) **Selection of Judges.** In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

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(3) **Transfer of Cases.** Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

(4) **Budget.** The provisions of the county budget system, section[s] 16-1901 to 1911, inclusive, R.C.M. 1947, shall, except as provided by section 4, subsection 9 [36-204(9)] of this act, be applicable to expenditures for the court of conciliation; provided, however, that the court may submit to the board of county commissioners the information required by section 16-1901 on or before July 1st of each year.

(5) **Manner of Conciliation.** The judge of the conciliation court may hear all matters invoked under this act or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

The conciliation counselor shall:

(a) Hold conciliation conferences with parties to, and hearings in, proceedings under this chapter, and make recommendations concerning such proceedings to the judge of the conciliation court.

(b) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

(6) **Probation Officers Duties.** The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested, and in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

(7) **Privacy of Hearings.** All district court hearings or conferences in proceedings under this chapter shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses. Conferences may be held with each party and his counsel separately and in the discretion of the judge or counselor conducting the conference or hear-

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ing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

(8) **Jurisdiction.** The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the Constitution of Montana, Chapter 3 [Title 93], Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court."

Section 17. Section 36-205, R.C.M. 1947, is amended to read as follows:

"36-205. **Powers of the court.** The conciliation court shall have the same powers as the district court under the Constitution of the state of Montana, section[s] 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation."

Section 18. Section 40-4705, R.C.M. 1947, is amended to read as follows:

"40-4705. **Incorporation.** (1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) **Incorporators.** Five (5) or more individuals, none of whom are less than eighteen (18) years of age, may incorporate a stock insurer; ten (10) or more of such individuals may incorporate a mutual insurer. At least a majority of the incorporators shall be citizens of the United States. At least a majority of the incorporators shall be residents of this state.

(3) **Articles of incorporation.** The incorporators shall execute articles of incorporation in quadruplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation shall state the purpose for which the corporation is formed and shall show:

(a) The name of the corporation; if a mutual, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in jurisdictions wherein conflict of name with that of another insurer or organization might otherwise pre-

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vent the corporation from being authorized to transact insurance therein.

(b) The duration of its existence, which may be perpetual.

(c) The kinds of insurance, as defined in this code, which the corporation is formed to transact.

(d) If a stock corporation, its authorized capital stock, the number of shares of common stock into which divided, the par value of each such share, which par value shall be at least one dollar ($1). Shares without par value, or other than one (1) class of voting common stock, shall not be authorized. The articles of incorporation may limit or deny present or future stockholders pre-emptive or preferential rights to acquire additional issues of the stock, or bonds, debentures or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes or consent proceedings.

(e) If a stock corporation, the extent, if any, to which shares of its stock are subject to assessment.

(f) If a stock corporation, the number of shares subscribed, if any, by each incorporator.

(g) If a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred; such liability shall be stated in the articles of incorporation, but shall not be less than one (1) nor more than six (6) times the premium for the member's policy at the annual premium rate for a term of one (1) year.

(h) The minimum, not less than five (5), and the maximum, not more than twenty-one (21), number of directors who shall constitute the board of directors and conduct the affairs of the corporation; also, the names, addresses and terms of the members of the initial board of directors. The term of office of initial directors shall be for not more than one (1) year after the date of incorporation.

(i) The name of the county, and the city, town or place within the county, in which its principal office or principal place of business is to be located in this state.

(j) Such other provisions, not inconsistent with law, deemed appropriate by the incorporators.

(k) The name and residence address of each incorporator,

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and the citizenship of each incorporator who is not a citizen of the United States."

Section 19. Section 41-1603, R.C.M. 1947, is amended to read as follows:

"41-1603. **Commissioner of labor and industry—term—salary—oath.** The term of office of the commissioner of labor and industry shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the department of labor and industry. If the legislative assembly does not specify the maximum salary of the commissioner, any increase in the salary of the commissioner must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The salary shall be payable monthly. Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by the Montana Constitution."

Section 20. Section 43-508, R.C.M. 1947, is amended to read as follows:

"43-508. **"Final passage," meaning of.** The words "final passage," as used in the preceding section, shall be held to mean the enactment into law of a bill which has passed the legislative assembly, either with or without the approval of the governor, as provided in the constitution."

Section 21. Section 46-1903, R.C.M. 1947, is amended to read as follows:

"46-1903. **Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys.** (a) The destruction, extermination and control of wild animals, including wolf, wolverine, coyote, mountain lion, lynx, cougar, bobcat and any other wild animals predatory in nature and causing, or capable of causing the killing, destruction, maiming or injury of domestic livestock of all species, and of domestic poultry of all varieties, or depredations thereon, shall, as respects the protection and safeguarding of all said livestock and poultry in the state, against all depredations from such animals, be conducted in the state and carried out by the Montana livestock commission which is hereby charged with the primary duty and responsibility of formulating practical programs for accomplishing said objectives in all areas of Montana, and of carrying out such programs in an efficient and practical

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manner, responsive to the need for control in each area of the state. The said commission shall adopt such standing rules and regulations, within the purview of the authority vested in it by the statutes of the state of Montana applicable to predatory animal control, as are necessary and proper for the systematic destruction of said wild animals by hunting, trapping and poisoning operations, and payments of bounties, and the commission shall, from time to time, issue, modify, amend or repeal field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, as may be appropriate in the various areas, at different seasons of the year, and with reference to the habits, presence, migrations or movements of such animals, and their attacks on livestock and poultry, either singly or in packs or bands. The said commission is hereby expressly authorized, empowered and directed to co-operate with the duly authorized representatives of the United States, including its Biological Survey, its Fish and Wild Life Service, with the state fish and game commission of the state of Montana, and with boards of county commissioners in the several counties of the state, and with voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers and sportsmen, and with corporations and individuals, in the systematic destruction of said wild animals by hunting, trapping and poisoning operations.

(b) The governor shall appoint an advisory committee, composed of one (1) representative of each, the Montana Woolgrowers' Association, the Montana County Commissioners' Association, the Montana Stockgrowers' Association, the Montana Federated Wildlife Clubs, and the state fish and game warden, which advisory committee shall consult with and advise the Montana livestock commission, the state fish and game commission, and county and local predatory animal control organizations in all matters pertaining to their activities hereunder and under any other laws of this state applicable to predatory animal control, and develop and formulate plans for effective predatory animal extermination and controls throughout the state, and advise with respect to the expenditure of all moneys for the control of such animals by each said agencies, organizations and persons. The secretary of the Montana livestock commission shall be ex officio, secretary of said advisory committee, and the committee shall elect one (1) of its members chairman thereof. The committee shall meet on five (5) days' notice, at the call of its chairman, or at request of any two members, or at the request of the Montana livestock commission.

(c) *The* Montana livestock commission shall administer and expend for predatory animal extermination and control, in production of livestock and poultry in the state of Montana all the moneys that are or may be made available to it, including the moneys

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from the levy under section 84-5214 and all such moneys as are made available to said commission by appropriations made by the legislative assembly for predatory animal control by said commission. The commission shall expend said funds for predatory animal control by all effective means, including employment of hunters, trappers and other personnel, procurement of traps, poisons, equipment and supplies, and, also, for the payment of bounties within the sound discretion of the commission, as advised by the advisory agencies aforesaid, and responsive to the necessities of control in various areas of the state. The commission shall not consider or approve any claims against funds available to it, in excess of the amounts available in any biennium, and no warrants shall be issued or registered for any such claims whether for bounties or for any other purposes.

(d) Nothing herein contained shall be construed to interfere with or impair the power and duties of the state fish and game commission in the control of predatory animals by said commission as authorized by law, nor the obligation of said commission to expend its funds in co-operation with the Montana livestock commission, for predatory animal control as required by law, provided that all funds of the state fish and game commission for such co-operative predatory animal control shall be administered and expended by the state fish and game commission."

Section 22. Section 59-203, R.C.M. 1947, is amended to read as follows:

"59-203. **Certain officers, how elected.** The mode of election of the governor, lieutenant-governor, secretary of state, state auditor, attorney general and superintendent of public instruction is prescribed by the constitution."

Section 23. Section 59-413, R.C.M. 1947, is amended to read as follows:

"59-413. **Oath, form of.** Members of the legislative assembly and all officers, executive, ministerial, or judicial, must, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation, to wit: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity. So help me God." And no other oath, declaration, or test must be required as a qualification for any office or trust."

Section 24. Section 60-125, R.C.M. 1947, is amended to read as follows:

"60-125. **Oil and gas conservation commission—members—**

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term—oath—seal—employees. A. There is hereby created the oil and gas conservation commission of the state of Montana.

B. The oil and gas conservation commission of the state of Montana shall be composed of five (5) persons to be appointed by the governor, with the concurrence of the state senate. That of the commissioners, two (2) and not more than two (2) will be appointed for a period of two (2) years, and they shall be from industry. One (1) nonindustry man shall be appointed for three (3) years and one for four (4) years and one (1) for five (5) years. At the expiration of the term of the two (2) industry men, the appointment of their successors shall be for four (4) and five (5) years respectively, after which all vacancies shall be filled for five (5) year terms. All appointed members of the commission shall be subject to removal by the governor for cause at any time. In case of a vacancy in the office of a member of the commission, an appointment shall be made to fill such vacancy in the manner prescribed by the constitution of the state of Montana.

C. Persons appointed as members of the commission shall have been bona fide residents of the state of Montana for at least one (1) year before such appointment, and the two (2) industry members, shall have had at least three (3) years' experience in the production of oil or gas.

D. Each member appointed to the commision and each person appointed to office by the said commission before entering upon the duties of his office shall take and subscribe to the oath specified in the constitution of the state of Montana and such *oath* shall be filed in the office of the secretary of state.

E. The commission shall have a seal with the words engraved thereon: "Oil and Gas Conservation Commission of Montana," and such seal shall be affixed to all writs, authentication of records or other official proceedings of the commission. The courts of this state shall take judicial notice of such seal.

F. The commission shall appoint an executive secretary and may employ such other persons as experts, geologists, petroleum engineers, attorneys, assistants, field supervisors, clerks and stenographers and may acquire such personal property as may be necessary to perform the duties that may be required of it, and fix the compensation of the executive secretary and employees. Each member of the commission shall receive, as compensation for his services, the sum of twenty dollars ($20) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the place at which he performs such duties, together with transportation and per diem expenses as provided by law in the discharge of said duties; provided, however,

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that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of section 60-145, plus any amount appropriated for that purpose, or otherwise accruing to said fund."

Section 25. Section 66-2604, R.C.M. 1947, is amended to read as follows:

"66-2604. **Water well contractor's examining board—members—terms—oath—seal—employees.** (1) There is hereby created the water well contractor's examining board of the state of Montana.

(2) The water well contractor's examining board of the state of Montana shall be composed of one (1) nonvoting member and three (3) voting members. The one (1) nonvoting member shall be a technical adviser hydrogeologist appointed by the director of the Montana bureau of mines and geology. Of the three (3) voting members one (1) member shall be the state engineer, appointed, qualified and acting pursuant to the provisions of section 81-2006; one (1) member shall be the director of the division of environmental sanitation of the state board of health of the state of Montana; and one (1) member shall be appointed by the governor with the concurrence of the state senate. In making this appointment, the governor may consider recommendations made to him by the Montana water well drillers association, and shall be from the water well drilling industry. The appointive member of the board shall serve for a term of three (3) years. In case of a vacancy in the office of a member of the board, an appointment shall be made to fill the same in the manner prescribed by the constitution and laws of this state. The appointive member of the board shall have been a bona fide resident of this state for a period of at least three (3) years prior to such appointment and shall have had at least five (5) years' experience in the water well drilling business.

(3) The appointive member of the board shall, upon entering on the duties of his office, take and subscribe to the oath specified in the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state of the state of Montana.

(4) The board shall have a seal with the words engraved thereon: "Water Well Contractor's Examining Board," and such seal shall be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of such seal.

(5) The board may, in its discretion, employ a secretary and such other persons as may be necessary to perform the duties of

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the board, either upon a part-time basis or upon a full-time basis. Each appointed member of the board who is not a government employee shall receive, as compensation for his services, the sum of twenty dollars ($20) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided by law. The state engineer and the director of environmental sanitation of the state board of health of the state of Montana shall receive no extra compensation for their services as members of the board."

Section 26. Section 72-102, R.C.M. 1947, is amended to read as follows:

"72-102. **Oath.** Each member of said board, and each person appointed to office by said board, before entering upon the duties of his office, shall take and subscribe the oath specified in the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state."

Section 27. Section 75-5701, R.C.M. 1947, is amended to read as follows:

"75-5701. **Definition.** As used in this Title, unless the context clearly indicates otherwise, "superintendent of public instruction" means that state government official designated as a member of the executive *branch by* the constitution of Montana."

Section 28. Section 75-5801, R.C.M. 1947, is amended to read as follows:

"75-5801. **Definition.** As used in this Title, unless the context clearly indicates otherwise, "county superintendent" means the county government official *who is* the school officer of the county."

Section 29. Section 75-5802, R.C.M. 1947, is amended to read as follows:

"75-5802. **Election and qualification.** A county superintendent shall be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent shall be elected at the general election preceding the expiration of the term of office of the incumbent.

Any person shall be qualified to assume the office of the county superintendent who:

(1) *is a qualified elector;*

(2) holds a valid teacher certificate issued by the superintendent of public instruction; and

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(3) has not less than three (3) years of successful teaching experience."

Section 30. Section 75-6203, R.C.M. 1947, is amended to read as follows:

"75-6203. **Retirement board.** The governing board of the Teachers' Retirement System of the State of Montana shall be:

(1) the superintendent of public instruction;

(2) two (2) persons appointed from the teaching profession who are members of the retirement system; and

(3) two (2) persons appointed as representatives of the public.

Each appointed member of the governing board shall be appointed by the governor to serve a term of four (4) years and until his successor has been appointed and qualified. When a vacancy occurs in the position of an appointed member of the governing board, the governor shall appoint a person to serve the unexpired term for such position.

The attorney general shall be the legal adviser of the governing board.

Each appointed member of the governing board shall take and subscribe to the oath prescribed by the state of Montana, and such oath shall be filed in the office of the secretary of state.

A majority of the members of the governing board shall constitute a quorum for the transaction of any business."

Section 31. Section 75-6410, R.C.M. 1947, is amended to read as follows:

"75-6410. **Qualifications of elector.** Except as provided in section 75-6411, every person is entitled to vote at school elections if he has the following qualifications:

(1) He has registered to vote with the county registrar in the manner provided by the general state election laws except in regard to the closure of elector registration as provided in section 75-6413;

(2) He *is eighteen (18) years of age or older;*

(3) He has *been a resident of Montana for at least thirty (30) days;* and

(4) He is a citizen of the United States.

No person convicted of a felony has the right to vote *while he is serving a sentence in a penal institution.*

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No person adjudicated *to be of unsound mind* has the right to vote unless he has been restored to capacity as provided by law."

Section 32. Section 75-7104, R.C.M. 1947, is amended to read as follows:

"75-7104. **Limitations on amount of bond issue.** The maximum amount for which each school district shall become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is five per cent (5%) of the assessed value of the taxable property therein as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. All bonds issued in excess of such amount shall be null and void.

When the total indebtedness of a school district has reached the five per cent (5%) limitation prescribed in this section, such school district shall have the power and authority to pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this Title.

Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded shall be applied towards the payment of such bonds and the refunding bond issue shall be decreased accordingly."

Section 33. Section 75-8113, R.C.M. 1947, is amended to read as follows:

"75-8113. **Qualifying and organization of board of trustees.** Newly elected members of the board of trustees of the community college district shall be qualified by taking the oath of office prescribed by the constitution of Montana. At the organization meeting called by the board of education, the board of trustees shall be organized by the election of a president and vice-president and a secretary; said secretary may be or may not be a member of the board. The treasurer of the community college district shall be the county treasurer of the county in which the community college facilities are located."

Section 34. Section 79-1201, R.C.M. 1947, is amended to read as follows:

"79-1201. **Unified investment plan for investment funds.** This section shall be regarded as a general explanation of the main features of this act. The term Unified Investment Plan as used in this act shall denote the investment and administration by the

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state board of land commissioners of the various funds which it is authorized to invest and administer under the provisions of this act. There shall be three investment funds known and designated as the Montana trust and legacy fund, the long term investment fund and the short term investment fund. Under the Montana trust and legacy fund all securities purchased and all cash on hand will belong jointly to the funds invested; they will share the interest collected on the same basis, and losses if any will automatically distribute themselves pro rata over all the funds; but each fund will maintain its separate existence; all receipts for each fund including its share of the interest collected will be added to that fund, and every payment made will be deducted from the proper fund."

Section 35. Section 79-1206, R.C.M. 1947, is amended to read as follows:

"79-1206. **Investment of moneys—supreme Court supervision—duty of land commissioners.** All moneys invested as the Montana trust and legacy fund shall be invested as one (1) common fund and shall be invested in the same kinds of securities as the statutes prescribe for the investment of the other moneys under the administration of the state board of land commissioners. The entire investment of the Montana trust and legacy fund shall be subject to the supervision of the justices of the supreme court. The commissioner of state lands and investments shall perform the same duties and exercise the same powers with regard to the investment administration of the moneys under the unified investment plan as he performs with regard to the other investments made by the state board of land commissioners."

Section 36. Section 79-1211, R.C.M. 1947, is amended to read as follows:

"79-1211. **Annual transfer of interest collected.** On the last day of December each year the interest collected shall be credited pro rata to each and every subfund then constituting the Montana trust and legacy fund that was in the keeping of the state on January, based on the total thereof on that date, and shall be added to each such subfund, or held available for payment, according to the statutes and other valid provisions applicable thereto. If any subfund is larger or smaller on December 31, than on January 1 of the same year, then the average of the amounts on these two (2) dates shall be the basis for calculating the interest to be credited to that subfund. The interest on all other subfunds shall be credited to each subfund as earned by each such subfund."

Section 37. Section 79-1212, R.C.M. 1947, is amended to read as follows:

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"79-1212. **Payments from Montana trust and legacy fund.** The principal, and any part thereof, of each and every subfund constituting the Montana trust and legacy fund shall be subject to payment at any time when due under the statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular subfund arises."

Section 38. Section 79-1215, R.C.M. 1947, is amended to read as follows:

"79-1215. **Records of treasurer—publicity to contributors given by legislature.** The state treasurer shall keep in a book provided for that purpose, a permanent record of all gifts, donations, grants, legacies, bequests, devises and other contributions administered by the state board of land commissioners under *the trust and legacy fund statutes.* This record shall show the names of the givers, the purposes of the contributions and all essential facts relating thereto. A duplicate of this record shall be kept by the secretary of state. These records shall be preserved perpetually as a lasting memorial to the givers and their interest in society. The legislative assembly shall from time to time make provisions for suitable publicity concerning these benefactors of their fellow men."

Section 39. Section 79-2411, R.C.M. 1947, is amended to read as follows:

"79-2411. **Factors in determining share of administrative cost —tax proceeds—highway purposes—constitutional restriction.** In determining or redetermining the fair share, the board may consider such factors of cost distribution and cost estimation as it deems necessary. However, that as to the proceeds of those taxes, the use of which is restricted by the Montana constitution, the board shall assess only those administrative costs ascertained as being necessarily incurred in connection with highway purposes as set forth in *the constitution.*"

Section 40. Section 81-101, R.C.M. 1947, is amended to read as follows:

"81-101. **Department of state lands created—purpose.** There is hereby created a department of the government of the state of Montana to be known and designated as the "Department of State Lands." The general purpose of this department shall be to administer the federal land grants made to the state of Montana, and the other state lands, and the funds arising from these lands."

Section 41. Section 81-905, R.C.M. 1947, is amended to read as follows:

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"81-905. **Surveying and platting left to discretion of board.** It shall be entirely optional with the board whether or not state lands, or any part thereof, shall be surveyed, platted and laid off into blocks and lots as hereinabove provided, as may appear to be for the best interests of the state. All lands *within the limits of any town or city or within three (3) miles of such limits* shall, however, be subdivided into lots or tracts of not more than five (5) acres each before being offered for sale and the lots must then be sold alternately at regular sales of state lands.

When such tracts of five (5) acres or less have been sold, the board shall whenever deemed necessary cause the plat thereof to be filed for record with the county clerk and recorder of the county in which the land is situated, but if the same purchaser bids in two or more adjoining lots or tracts, all the lots so purchased shall at the option of the purchaser be included in one certificate of purchase."

Section 42. Section 81-1001, R.C.M. 1947, is amended to read as follows:

"81-1001. **Investment of permanent funds.** All moneys belonging to the public school permanent fund and to the other permanent funds of the educational, charitable and penal institutions of the state, shall be carried by the state treasurer as subfunds in the trust and legacy fund, and shall be safely invested by the board of *investments* in bonds of school districts within the state of Montana; in bonds of the several counties and cities of the state of Montana; in bonds of the state of Montana or of the United States; bonds fully guaranteed by the United States as to principal and interest; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks, in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, or upon the bridge fund of the several counties of the state of Montana; all of such investments to be subject to the regulations and limitations of this act."

Section 43. Section 81-1102, R.C.M. 1947, is amended to read as follows:

"81-1102. **Gifts, donations, grants, legacies and devises to the state.** The state board of land commissioners is hereby authorized and empowered to accept on behalf of the state from any natural person gifts, donations, grants, legacies and devises having a value of not less than two hundred fifty dollars ($250.00) from each person. All lands passing to the state under these provisions or through the operation of law, shall be managed as other state

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lands and the rents and earnings shall be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations. All money realized from the sale of such lands and from other property and all gifts, donations, grants, legacies, and devises made in money, or the equivalent of money, shall be administered by the board for the benefit of the specific purposes designated by the person from whom they were received and as further regulated by this act. The provisions of this section shall apply to gifts, donations, grants, legacies and devises already made to the state and now under the administration of the board if not contrary to any specific provisions made therein by the persons from whom they were received."

Section 44. Section 81-1712, R.C.M. 1947, is amended to read as follows:

"81-1712. **Disposition of royalties and other moneys.** All fees, rentals, penalties, royalties and bonuses collected for or under such leases shall be paid to the register of state lands and by him credited as follows: All fees and penalties shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the lands under each lease belong; all moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and forever remain an inseparable and inviolable part thereof; provided, however, that all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income the same as all other receipts from such lands; and provided further that all moneys received as rentals, royalties and bonuses for or under leases on lands owned by the state of Montana and not held in trust for the public schools of the state or for any state institution shall be credited, one-half to the state general fund and one-half to the state permanent revenue fund."

Section 45. Section 82-501, R.C.M. 1947, is amended to read as follows:

"82-501. **Election and term of office.** There must be a clerk of the supreme court, who must be elected by the electors at large of the state, and hold his office for the term of six years from the first Monday of January next succeeding his election."

Section 46. Section 82-3801, R.C.M. 1947, is amended to read as follows:

"82-3801. **Citation of act.** This act may be cited as "The Post-Enemy-Attack Continuity in Government Act." "

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Section 47. Section 82-3802, R.C.M. 1947, is amended to read as follows:

"82-3802. **Succession to governorship.** Following an enemy attack, the line of succession to the office of governor shall be extended to members of the legislative assembly in the order of their seniority. For purposes of this section the term "seniority" means the member who has served in the legislature for the longest continuous period of time up to and including his current term. If two (2) or more members of the legislative assembly have equal seniority, the line of succession among them shall be from eldest to youngest in age."

Section 48. Section 82-3803, R.C.M. 1947, is amended to read as follows:

"82-3803. **Succession to boards of county commissioners.** In case of a vacancy on any board of county commissioners occurring during or following an enemy attack if the judge or judges of the judicial district in which the vacancy occurs be not available to make the appointment then the district judges of all other judicial districts shall be authorized to make such appointment, provided, however, that of the available judges in the state of Montana that judge who holds court in the county seat closest to the county seat where the vacancy occurs shall be responsible for making the appointment to fill the vacancy."

Section 49. Section 84-404, R.C.M. 1947, is amended to read as follows:

"84-404. **State board of equalization to assign percentage basis, when.** The percentage basis of true and full value as provided for in section 84-302, shall be determined and assigned by the state board of equalization, when it makes its annual assessment of the property, which it is required to assess under the laws of this state and shall transmit such determination and assignment to the various county clerks with the assessments so made, and its determination shall be final except as to the right of review in the proper court."

Section 50. Section 84-701, R.C.M. 1947, is amended to read as follows:

"84-701. **State board of equalization—appointment of members—term of office.** The state board of equalization shall be composed of three (3) members to be appointed by the governor by and with the advice and consent of the senate. Each member shall hold his office for a term of six (6) years, and until his successor shall be appointed and shall have qualified. Any vacancy shall be filled by appointment. *Appointments*, except when made to fill a

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vacancy, shall be made on or before the last day of January during the biennial session of the legislative assembly, next preceding the commencement of the term for which the appointment is made."

Section 51. Section 84-1901, R.C.M. 1947, is amended to read as follows:

"84-1901. **Disposition of moneys from certain designatied license ad other taxes.** The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of automobile drivers' license fees under section *1741.11*, electric energy producers' license taxes under sections 84-1601 to 84-1609, inclusive, metalliferous mines license taxes under sections 84-2001 to 84-2015, inclusive, telegraph license taxes under sections 84-2501 to 84-2508, inclusive, oil producers' license taxes under sections 84-2201 to 84-2211, inclusive, natural gas distributors' license taxes under sections 84-2101 to 84-2110, inclusive, liquor license taxes under chapter 4 of Title 4, telephone license taxes under sections 84-2601 to 84-2608, inclusive, inheritance and estate taxes under sections 91-4401 to 91-4459, inclusive, and seventy per centum (70%) of all moneys received from the collection of income taxes under sections 84-4901 to 84-4935, inclusive, and corporation license taxes under sections 84-1501 to 84-1519, inclusive, subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining twenty-five per centum (25%) of the proceeds of the corporation license tax and income tax shall be deposited to the credit of the earmarked revenue fund for state equalization aid to the public schools of Montana; and the state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees and from all other sources under the operation of the Montana Beer Act, and being sections 4-301 to 4-356, inclusive, and all net revenues and receipts received by him from and under the operation of the State Liquor Control Act, being sections 4-101 to 4-237, inclusive."

Section 52. Section 84-3804, R.C.M. 1947, is amended to read as follows:

"84-3804. **Increase of state tax levy—support units of university.** Upon the approval of the electors of this state, to be determined by their vote at the general election to be held in November of 1968, the legislative assembly shall levy a property tax of not more than six (6) mills on the taxable value of all real and personal property each year for ten (10) years beginning with the year 1969. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system."

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Section 53. Section 84-4713, R.C.M. 1947, is amended to read as follows:

"84-4713. **Taxes in cities and towns which have exceeded the constitutional limit of indebtedness.** All taxes heretofore levied and collected, or to be collected for municipal and administrative purposes by any city or town, the indebtedness of which equals or exceeds *five per cent (5%) of the value of the taxable property therein* may be used in payment of current expenses during the fiscal year for which said taxes were levied, the same as though a special levy had been made for each of said purposes. And the council of any such city or town is hereby authorized to designate the amount of said general levy aplicable to each of said purposes, and the amount so designated shall constitute a special fund for the special purpose of paying the expenses incurred for such purpose, and such expenses shall be payable out of such fund and not otherwise; provided, that the aggregate of all taxes authorized for general municipal and administrative purposes shall not exceed one and one-half per cent (1½%) annually upon the per centum of the assessed value of all taxable property in such city or town."

Section 54. Section 84-5214, R.C.M. 1947, is amended to read as follows:

"84-5214. **Levy for bounty moneys—use of proceeds.** The state board of equalization of the state of Montana shall make and levy an ad valorem tax on all livestock in the state of Montana for the purpose of protecting such livestock by all means of effective predatory animal destruction, extermination and control, including systematic hunting, trapping in planned campaigns, or otherwise, and payment of bounties, against destruction, depredation and injury by wild animals, whether on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. The tax levy shall not exceed in any one (1) year (a) one and one-half (1½) mills on the assessed valuation of all sheep, and (b) one (1) mill on the assessed valuation of other livestock. The moneys received from such tax levies shall be transmitted monthly with other taxes for state purposes, by the county treasurer of each county, to the state treasury, and be by the state treasurer placed in and to the credit of the earmarked revenue fund (with other moneys in that fund under the provisions of section 46-1901) and such moneys shall thereafter be paid out only on claims duly and regularly presented to the Montana livestock commission, and thereafter approved by said commission, in accordance with the law applicable either to claims for bounties, when such claims are approved, or to claims for other expenditures necessary and proper for predatory animal control by other means and methods than payment of bounties, as may be determined by the

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Montana livestock commission. All such moneys shall be available for the payment of bounty claims and for expenditures in and for planned, seasonal, or other campaigns directed, or operated by the commission in cooperation with other agencies, for the systematic destruction, extermination and control of predatory wild animals, as may be determined by the commission and the advisory committee thereto. No claims shall be approved in excess of moneys available for such purposes, and no warrants shall be registered against such moneys."

Section 55. Section 91-520, R.C.M. 1947, is amended to read as follows:

"91-520. **Conditions under which aliens in foreign country may inherit.** 1. No person shall receive money or property, save and except mining property as an heir, devisee and/or legatee of a deceased person leaving an estate or portion thereof in the state of Montana, if such heir, devisee and/or legatee, at the time of the death of said deceased person, is not a citizen of the United States and is a resident of a foreign country at the time of the death of said intestate or testator, unless, reciprocally, the foreign country in question would permit the transfer to an heir, devisee and/or legatee residing in the United States, of property left by a deceased person in said foreign country.

2. In order to prove reciprocity the alien heir, devisee and/or legatee must establish by competent evidence produced at a hearing to determine heirship; (a) that such foreign country recognizes the right of United States citizens to inherit property left by a deceased person in such foreign country; (b) that such foreign country places no restrictions upon the movement of money or property out of such foreign country to an heir, devisee and/or legatee residing in the United States.

3. If such proof as required by subsection 2 establishes the fact that such foreign country recognizes the right of inheritance, but restricts the movement of money or property out of such foreign country to an heir, devisee and/or legatee residing in, and a citizen of the United States, then and in that event, the court upon such a determination, shall at the time of final distribution, order the inheritance of such alien heir, devisee and/or legatee distributed to the state treasurer of the state of Montana, in trust for such named heir, devisee and/or legatee, under such conditions and restrictions as are imposed on the movement of money or property by such foreign country in question to an heir, devisee and/or legatee residing in, and a citizen of the United States.

4. In an action for dissolution of the trust so created, the following jurisdictional facts must be set forth in the complaint: (a) the name of the beneficiary of the trust; (b)

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the foreign country in which the beneficiary has his permanent residence; (c) the conditions and restrictions imposed upon the trust funds by the court in its decree of final distribution; (d) the fact that the beneficiary is in the state of Montana; (e) the verification of the complaint by the beneficiary before an official of the state of Montana authorized by law to administer oaths; (f) that the action has been commenced within the period of three (3) years of the date the trust was created, unless the conditions of the trust declare a shorter or longer period to exist in the country of the foreign heir's residence and that reciprocally such period has been imposed to satisfy the requirements of reciprocity, hereinabove set forth; (g) in the event that the beneficiary is a minor or insane person, his action must be instituted within the period of limitation herein provided for the commencement of the action, by his guardian, duly appointed under the laws of the country of residence of said minor or insane person and the record of such appointment shall be fully exemplified and attested by a duly accredited representative of the state department of the government of the United States of America in such foreign country; (h) unless the action herein provided shall have been commenced within three (3) years, or such shorter or longer period as is specifically declared as a condition of the trust, as hereinabove required, then such trust funds shall forthwith escheat to the state of Montana, and no action can thereafter be instituted in the courts of this state for the recovery of such escheated trust funds.

5. The action provided for under the provision of subsection 4 hereof shall in all other respects comply with the requisites of section 91-518.

6. No estate in which alien heirs, devisees and/or legatees have a distributive share shall be considered to be in a condition to petition for final distribution, unless, the court enters a written order in such estate decreeing that an action for determination of heirship has been instituted in which the state of Montana was made a party-defendant and that a decree determining heirship has been entered and filed in said action."

Section 56. Section 93-4215, R.C.M. 1947, is amended to read as follows:

"93-4215. **Injunction against** *price fixing.* Whenever any action, either civil or criminal, shall have been instituted in court in this state against any person or persons, corporation or corporations, foreign or domestic, for *price fixing or regulating the production of any article of commerce or of the product of the soil, for consumption by the people,* the court in which such action is pending, if it be a court of record, or if not, then any court of record in this state, shall

be and it is hereby authorized to issue an injunction to restrain any such person or persons, corporation or corporations, foreign or domestic, from doing business in this state pending the final determination of said action so instituted."

Section 57. Section 93-4216, R.C.M. 1947, is amended to read as follows:

"93-4216. **Injunction may issue without bond.** Said injunction shall issue as in cases of equity, without bond, upon the application of the county attorney of the county in which such action is pending, or upon the application of the attorney general, in the name of the state of Montana, upon a prima-facie showing that an action, civil or criminal, has been so instituted and is so pending, charging such person or persons, corporation or corporations, foreign or domestic, with *such* violation."

Section 58. Sections 3-101.1, 4-348, 16-405, 16-2407, 23-2701.1, 41-1609, 75-6410.1, 84-211 and 84-707, R.C.M. 1947, are repealed.

Approved: March 5, 1973.

CHAPTER NO. 101

An Act Amending Section 80-2310, R.C.M. 1947, Relating to the Establishment of a Mental Retardation Center at Glendive by Authorizing Such Center to Accept and Admit Mentally Retarded Persons not Residing in Montana when the State of Montana has Agreed to do so by Agreement with any Other State.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 80-2310, R.C.M. 1947, is amended to read as follows:

"80-2310. **Mental retardation center at Glendive—services provided.** The board of institutions shall establish, construct, equip, maintain and provide services for a mental retardation center at Glendive to be called "Eastmont training center" for residential and outpatient care of mentally retarded persons residing in Montana. *Provided, however, the center may admit mentally retarded persons not residing in Montana in those circumstances in which Montana has agreed to do so by agreement with any other state.* The center shall be planned, constructed, equipped and shall provide services similar to those provided at the state training school and hospital at Boulder; provided, however, that the center shall not

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be a duplication of the state training school and hospital but shall be an extension thereof."

Approved: March 5, 1973.

CHAPTER NO. 102

An Act to Amend Section 46-2515, R.C.M. 1947, by Deleting the Requirement of Proof of Purity of Breed of Sires Used for Artificial Insemination; and Abolishing License Procedures for Artificial Insemination; and to Amend Section 46-2505; and Repealing Sections 46-2501, 46-2504, 46-2506, 46-2507, 46-2508, 46-2509, 46-2510, 46-2511, 46-2512, 46-2513, and 46-2514, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 46-2515, R.C.M. 1947, is amended to read as follows:

"46-2515. **Only certain sires to be used for artificial insemination.** All sires used for artificial insemination must be free from brucellosis, vibriosis, trichomoniasis, dourine, posthitis, pullorum disease and all other transmissible, infectious, contagious diseases and all transmissible hereditary malformations and other detrimental or undesirable characteristics. Proof of fitness of such sires shall be provided to the *department of livestock* by the owner or parties providing such sires for artificial insemination.

Semen imported into the state of Montana from other states, territories and possessions of the United States or from foreign countries shall not be used by any artificial inseminator until proof is made to the satisfaction of the *department of livestock* that the sire from which such semen was taken was free from the above-mentioned diseases."

Section 2. Section 46-2505, R.C.M. 1947, is amended to read as follows:

"46-2505. **Act to be administered by Montana** *department of* livestock. This act shall be administered by the *department of* livestock and in addition to any powers now conferred by law the *department of* livestock shall have the following powers and duties:

(a) To promulgate such reasonable rules, regulations, and orders not contrary to the provisions of this act, when required, as may be necessary for the proper administration of this act, specifically including, but not limited to, rules, regulations, and

orders relating to the means for preservation of semen and the use of semen imported into the state of Montana from other states, territories, and possessions of the United States and foreign countries."

Section 3. Sections 46-2501, 46-2504, 46-2506, 46-2507, 46-2508, 46-2509, 46-2510, 46-2511, 46-2512, 46-2513, and 46-2514, R.C.M. 1947, are hereby repealed.

Approved: March 5, 1973.

CHAPTER NO. 103

An Act Amending Section 16-2041, R.C.M. 1947, to Permit the Board of County Commissioners to Use Excess Amounts from the Sinking and Interest Funds for Payment of Additional Expenses on the Project for Which a Bond Was Sold.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-2041, R.C.M. 1947, is amended to read as follows:

"16-2041. **County bond funds.** The county treasurer of each county shall keep in his books a special and separate sinking and interest fund account for each series or issue of outstanding bonds issued by his county, and each such fund must at all times show the exact condition thereof. All taxes collected for interest and principal on county bonds shall be placed to the credit of the sinking and interest fund for which the same were levied, and such fund shall not be used for any purpose other than the payment of principal and interest on such bonds so long as any of such bonds remain outstanding. *Provided, however, that interest from investment of moneys of the sinking and interest fund accounts of the bonds of any series or issue may, in the discretion of the board of county commissioners, be used as it accrues to fulfill or complete the specific project for which the bonds were issued.* When all bonds of any series or issue, with the interest thereon, have been fully paid, or called in for payment, and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest, *or not used as above provided,* such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the county, or to the sinking and interest fund of any other series or issue of bonds outstanding that the board of county commissioners may designate."

Approved: March 5, 1973.

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CHAPTER NO. 104

An Act Amending Section 40-3640, R.C.M. 1947, to Require That Revenues and Profits from Reserves be Considered in the Determination of Insurance Rates.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 40-3640, R.C.M. 1947, is amended to read as follows:

"40-3640. **Standards applicable to rates.** The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided, and (2) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided, and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(b) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, *to revenues and profits from reserves,* to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both country-wide and those specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state; and in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available.

Consideration may also be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(c) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those

of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

(d) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions."

Approved: March 5, 1973.

CHAPTER NO. 105

An Act Amending Section 75-6112, R.C.M. 1947, Requiring School District Trustees to Notify the District Superintendent or the County High School Principal in Writing of Their Intent to Aerminate His Services.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-6112, R.C.M. 1947, is amended to read as follows:

"75-6112. **Appointment and dismissal of district superintendent or county high school principal.** The trustees of any high school district, except a county high school, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school shall employ and appoint a district superintendent except that they may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, such joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly ap-

pointed district superintendent, neither district shall separately employ and appoint a district superintendent or county high school principal.

The written contract of employment of a district superintendent or a county high school principal shall be authorized by the proper resolution of the trustees of the district or the joint board of trustees, and executed in duplicate by the chairman of the trustees or joint board of trustees and the clerks of the districts, in the name of the districts, and by the district superintendent or the county high school principal. Such contract shall be for a term of not more than three (3) years and, after the second successive contract, the contract shall be deemed to be renewed for a further term of one (1) year from year to year thereafter unless the trustees shall, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of his existing contract. The trustees shall take such termination action and notify the district superintendent or the county high school principal *in writing* of their intent to terminate his services at the expiration of his current contract not later than the first day of February of the last year of such contract.

Whenever a joint board of trustees employs a person as the district superintendent, the elementary district and the county high school shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies such person to hold such position becomes invalid, the trustees of the district or the joint board of trustees shall discharge such person as the district superintendent or county high school principal regardless of the unexpired term of his contract. The trustees shall not compensate him under the terms of his contract for any services rendered subsequent to the date of the invalidation of his teacher certificate.

No district superintendent or county high school principal shall engage in any work or activity which the trustees may deem to be in conflict with his duties and employment as the district superintendent or county high school principal."

Approved: March 5, 1973.

CHAPTER NO. 106

An Act Providing for the Repeal of Sections 92-501, 92-503, 92-504, 92-505, 92-610, and 92-810, R.C.M. 1947, which are no Longer

Necessary in the Workmen's Compensation Act, Title 92, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Sections 92-501, 92-503, 92-504, 92-505, 92-610, and 92-810, R.C.M. 1947, are repealed.

Approved: March 5, 1973.

CHAPTER NO. 107

An Act Providing for a Definition of "Temporary Total Disability" in the Workmen's Compensation Act.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-439, R.C.M. 1947, which reads as follows:

92-439. **Temporary total disability defined.** "Temporary total disability" means a condition resulting from an injury as defined in this act that results in total loss of wages and exists until the injured workman is as far restored as the permanent character of the injuries will permit.

Approved: March 5, 1973.

CHAPTER NO. 108

An Act Providing for a Definition of "Permanent Partial Disability" in the Workmen's Compensation Act.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-440, R.C.M. 1947, which reads as follows:

92-440. **Permanent partial disability defined.** "Permanent partial disability" means a condition resulting from injury as defined in this act that results in the actual loss of earnings or earning capability less than total that exists after the injured workman is as far restored as the permanent character of the injuries will permit.

Approved: March 5, 1973.

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CHAPTER NO. 109

An Act Providing for a Definition of "Permanent Total Disability" in the Workmen's Compensation Act.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-441, R.C.M. 1947, which reads as follows:

92-441. **Permanent total disability defined.** "Permanent total disability" means a condition resulting from injury as defined in this act that results in the loss of actual earnings or earning capability that exists after the injured workman is as far restored as the permanent character of the injuries will permit and which results in the workman having no reasonable prospect of finding regular employment of any kind in the normal labor market.

Approved: March 5, 1973.

CHAPTER NO. 110

An Act to Amend Section 26-202.1, R.C.M. 1947, Requiring Nonresident Juveniles Under the Age of Eighteen (18) to Have Completed a Course in the Safe Handling of Firearms Before Purchasing a Nonresident Hunting License; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 26-202.1, R.C.M. 1947, is amended to read as follows:

"26-202.1. **Licenses — fees — classifications of licenses — fees and powers under licenses.** (1) Class A license—Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of four dollars ($4) shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 license—Resident Game Bird License. Except as herein provided, any resident as defined by section 26-202.3, who is twelve (12) years of age or older, may, upon payment of a fee of two dollars ($2) receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the commission.

(a) No hunting licenses shall be issued to any resident person

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under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any one of the following: a Class A-3, A-4, A-5, B-2, B-5 or B-6 license, may upon payment of an additional sum of three dollars ($3) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to posses the carcass of deer, antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, three dollars ($3); Class A-4, Deer B Tag, five dollars ($5); Class A-5 Elk Tag, three dollars ($3); Class A-6, Black or Brown Bear Tag, five dollars ($5); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

(5) Class B license—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of fifteen dollars ($15) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. *Except as herein provided, any* person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunt-

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ing licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

No hunting licenses shall be issued to any nonresident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided in section 26-202.1(2)(a) or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

(7) Class B-2 License—Nonresident Big Game License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of one hundred twenty-five dollars ($125) for the license year from May 1, 1967 to April 30, 1968 and thereafter for subsequent license years upon payment of the sum of one hundred fifty dollars ($150) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, and kill game animals in the area or areas designated in the license, as determined by the commission, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(8) Class B-3 license—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of five dollars ($5) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days inclusive of the dates indicated on the license.

(9) Class B-5 License—Nonresident Deer License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-5 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) deer in the area or areas designated in the license, as determined by the commission, and to possess the carcass of same.

(10) Class B-6 License—Nonresident Antelope License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) antelope in

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the area designated in the license, as determined by the commission, and to possess the carcass of same.

(11) Special Licenses. Any applicant who is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Mountain Goat, resident fifteen dollars ($15), nonresident thirty dollars ($30);

Mountain Sheep, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Bison or Buffalo, resident twenty-five dollars ($25), nonresident one hundred dollars ($100);

Antelope, resident three dollars ($3), nonresident ten dollars ($10);

Grizzly Bear, resident five dollars ($5), nonresident grizzly, black or brown bear, thirty-five dollars ($35).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars ($25) within ten (10) days after the date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid applications for special licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.

(12) Class C License—Trapper's License. Any resident as defined in section 26-202.3, upon making application and paying the sum of ten dollars ($10) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap fur-bearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(13) Class C-1 License—Landowner's Trapping License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission,

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and upon payment of the sum of one dollar ($1) shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(14) Exception. (a) A resident under the definition of section 26-202.3, who is sixty-five (65) years or older shall be entitled to fish and hunt game birds with a pioneer license issued by the state fish and game commission for a fee of fifteen cents ($.15). The form of such license shall be prescribed by the fish and game commission.

(b) Residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) A veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, may fish with a license issued by the head of the hospital on forms prescribed and furnished by the commission. The fee for such license shall be fifteen cents ($.15).

(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(e) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, A-4, and A-5 licenses for one-half (½) of the fees prescribed in this section.

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6 licenses to be issued in each of the hunting districts designated by it.

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(15) Only one (1) license of any one (1) class, except Class B-3 and B-4 licenses, shall be issued to any one (1) person, provided,

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however, that the commission may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen or destroyed upon payment of the sum of one dollar($1).

(16) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who is twelve (12) years of age or older, upon payment of the sum of twenty dollars ($20) shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5 and A-6 licenses. The commission shall furnish each holder of a sportsman's license an appropriate decal."

Section 2. This act is effective upon its passage and approval.

Approved: March 5, 1973.

CHAPTER NO. 111

An Act Amending Section 89-1301, R.C.M. 1947, to Raise the Limit From Ten Thousand Dollars ($10,000) to Twenty-five Thousand Dollars ($25,000) for Which Irrigation District Commissioners can Contract for District Business.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-1301, R.C.M. 1947, is amended to read as follows:

"89-1301. **Powers and duties of commissioners.** The board of commissioners of every irrigation district established and organized under and by virtue of this act shall constitute the corporate authority of said district.

(1) The board shall have the power, and it shall be the duty of the members thereof, to manage and conduct the business and affairs of the district; adopt a corporate seal therefor; make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required, and prescribe their duties.

(2) The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works, including drainage works and the line for any canal or canals, and necessary branches for the same, on any lands which in the judgment of the board may be deemed best suited for such location.

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(3) The board shall have power and authority to appropriate water in the name of the district, to acquire by purchase, lease, or contract, water and water rights; additional waters and supplies of water, canals, reservoirs, dams and other works already constructed, or in the course of construction, with the privilege, if desired, to contract with the owner, or owners of such canals, reservoirs, dams and other works so purchased and in the course of construction, for the completion thereof and shall also have power and authority to acquire by purchase, lease, contract, condemnation, or other legal means, lands (and rights in lands) for rights of way, for reservoirs, for the storage of needful waters, and for dam sites, and necessary appurtenances, and such other lands and property as may be necessary for the construction, use, maintenance, repair, improvement, enlargement and operation of any district system of irrigation works.

(4) The board shall have power and authority to enter into, and do any acts necessary or proper for the performance of any agreements with any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair, or operation of any rights, works or other property of a kind which might lawfully be acquired or owned by the irrigation district, and may acquire the right to store water in any reservoirs or to carry water through any canal, ditch, or conduit not owned or controlled by the district, and may grant to any owner or lessee of the right to the use of any water the right to store such water in any reservoir of the district or to carry such water through any canal, ditch or conduit of the district.

(5) But no purchase, lease or contract for purchase of any water, or water rights, or canals, or reservoirs, or reservoir sites, or dam sites, or irrigation works or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates and specifications, or for the purchase of machinery for pumping plants, or the erection of buildings, aqueducts and other structures necessarily used in connection with such pumping plants, for a price or rental in excess of *twenty-five* thousand dollars *($25,000)*, shall be final or binding upon the district, nor shall said sum be paid without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district. Any splitting or division of such purchase, lease or contract with the purpose or intention of avoiding or circumventing the provisions of this section shall render such divided or split contract or contracts absolutely null and void.

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(6) For the purpose of acquiring control over government land within the district and of complying with the provisions of the act of Congress of August 11, 1916, the board shall have authority to make such investigations, and base thereon such representations and assurances to the secretary of the interior, as may be requisite.

(7) The board may enter into any obligation or contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom, and of the necessary drainage works; or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands, under the provisions of the Federal Reclamation Act and all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or the board may contract with the United States for a water supply under any act of Congress providing for or permitting such contract, and in case contract has been or may hereafter be made with the United States as herein provided, bonds of the district may be deposited with the United States, at ninety per cent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on said bonds of the district and regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited, it shall be the duty of the board of commissioners to include as part of any levy or assessment provided for in section 89-1801, an amount sufficient to meet each year all payments accruing under the terms of any such contract; and the board may accept, on behalf of the district, appointment of the district as fiscal agent of the United States, or authorization of the district by the United States to make collections of moneys for or on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized to so act and to assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto, including the power to require the prompt payment of all charges as prerequisite to water service.

(8) Said board may also construct and maintain the necessary dams, reservoirs, and works for the collection and distribution of water for the district, from one or more sources and from different and additional sources, and operate such works, and may secure in any of the manners in this act provided additional water

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supplies from the same or different sources, and do any and every lawful act necessary to be done in order that sufficient water may be furnished for irrigation purposes to all the lands in the district included at the time of its organization or at any time thereafter.

(9) The board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this act, in the name of the district, to and for the uses and purposes herein expressed.

(10) The board is hereby authorized and empowered to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this act, or acquired in pursuance thereof, and in all courts, suits, or proceedings, the said board may sue, appear, and defend in person or by attorneys, and in the name of such irrigation district.

(11) The board may adopt rules and bylaws governing the calling and holding of meetings of the board, the manner of transacting business thereat, and the publishing or posting of the orders, resolutions, and proceedings of the board. It shall be the duty of said board to pass or adopt bylaws, rules and regulations for the apportionment and distribution of water to the lands of the district, and for the protection and preservation of the works and other property of the district, which shall be printed in convenient form for distribution in the district; and may therein require the prompt payment of all taxes and assessments delinquent for not to exceed two years as a prerequisite to water service. All orders and resolutions shall be passed or adopted by a majority of the commissioners by a yea and nay vote, to be entered upon the records of the board.

(12) For the purpose of purchasing or constructing the necessary irrigation canals or works, or acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of this act, the board of commissioners of any irrigation district must, as soon after such district has been organized as practicable, formulate a general plan for such purchase, construction, and acquisition of such property, and shall cause such surveys, examinations, and plans to be made as shall demonstrate the practicability of such plans, as well as of procuring water from other and different sources, the amount of land that can be irrigated thereunder, and furnish the proper basis for an estimate of the cost of carrying out such plan and the value of any canal, works, property, or system of irrigation proposed to be purchased. All such surveys, examinations, maps, plans, and estimates shall be

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made by or under the direction and supervision of an irrigation engineer of well-known standing and competency, and all such necessary surveys, examinations, maps, plans and estimates must be certified to by him. When all such are completed, he shall submit them with all proper field notes to, and file them with, the board of commissioners, accompanied by his report and recommendation thereon. This report shall include a discussion of said plans by him submitted to said board, of the question of water supply, of the sufficiency of the works proposed to accomplish the desired results, of the practicability of the proposed system from an engineering standpoint, of the probability of being acquired or constructed within the estimate of the cost stated, and such general discussion and recommendation in regard to the engineering and financial features of the whole matter as in the judgment of such engineer shall be desirable for the information of the people of the district. Such report shall be accompanied by a map, when such is necessary for a proper explanation or understanding of the same.

Upon receiving such report, said board of commissioners shall proceed to determine the amount of money necessary to be raised for the purchase or construction of said proposed property, canals, or irrigation works, and system, and within ten days after arriving at such determination shall cause the secretary of said board to notify all persons or corporations holding title or evidence of title to lands within said district (ascertained as provided in section 89-1201) of the filing of said report and their determination thereon. Said notices shall be given through the United States mail by letter addressed to such person or corporation at the last known post-office address of each person or corporation aforesaid. A certificate of the secretary of the board as to the fact of mailing said notice, affixed to a copy of said notice and recorded in the record book of said board of commissioners, shall be sufficient and conclusive evidence of such fact.

(13) Said board shall have power generally to do and perform all such other acts as shall be necessary or appropriate to fully carry out the purposes of this act."

Approved: March 5, 1973.

CHAPTER NO. 112

An Act to Repeal Section 66-1928, R.C.M. 1947, by Eliminating the Requirement that Moneys Credited to the Board of Real Estate not used by December 31 Revert to the General Fund.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-1928, R.C.M. 1947, is repealed.

Approved: March 5, 1973.

CHAPTER NO. 113

An Act to Amend Section 75-6904, R.C.M. 1947, to Redefine the Eligibility of School Districts for an Average Number Belonging Increase due to an Unusual Enrollment Increase.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-6904, R.C.M. 1947, is amended to read as follows:

"75-6904. **Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.** A district which anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in subsection (5) of section 75-6903, may increase its foundation program for the ensuing school fiscal year in accordance with the following provisions:

(1) *The* average number belonging used for the establishment of the foundation program for the current year and for each year of the immediately preceding three (3) years shall be used to calculate the percentage increase or decrease in average number belonging for the current year's foundation program over the immediately preceding year, and similarly calculate the percentage increase or decrease in average number belonging for each of the two preceding years. The three (3) annual percentage increases or decreases shall be averaged to obtain the average annual percentage increase or decrease in average number belonging.

(2) *The* district shall estimate the current year's average number belonging by totaling the aggregate days of attendance and aggregate days of absence realized in the district through April 30 and dividing such total by one hundred eighty (180). The resulting average number belonging shall be increased by the *ratio* that the total number of planned school days in the current school fiscal year bears to the number of school days completed through April 30.

(3) Prior to May 10, the district shall estimate the probable average number belonging to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

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(4) No later than May 10, the district shall submit its application for an unusual enrollment increase to the board of school budget supervisors (budget board). Such application shall include:

(a) the computation of the average annual percentage increase in average number belonging as provided in subsection (1) above;

(b) the estimate of the current school fiscal year's average number belonging, as provided in subsection (2) above;

(c) the estimated average number belonging for the ensuing school fiscal year, including the factual information on which the estimate is based, as provided in subsection (3) above; and

(d) any other information or data that may be requested by the budget board.

(5) The budget board shall review the application to determine if the district is eligible for an increase in its foundation program. The budget board may accept, reject, or adjust the district's estimate of the ensuing year's average number belonging. After approving an estimate, the budget board shall:

(a) determine the percentage increase which the estimated average number belonging for the ensuing school fiscal year is over the estimated average number belonging for the current school fiscal year as provided for in subsection (2) above; and

(b) approve an increase of the average number belonging used to establish the ensuing year's foundation program in accordance with subsection (7) if the increase in subsection (5) (a) above is at least twice the average annual percentage increase as provided in subsection (1) above *or six percent (6%) whichever is larger.*

(6) If the budget board approves the application for an unusual enrollment increase, it shall send the application to the superintendent of public instruction together with any other information or data requested by the superintendent of public instruction on or before May 25. The superintendent of public instruction shall immediately review all the factors of the application and the approval of the budget board, and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing school fiscal year. The superintendent of public instruction shall notify the district of his decision by the fourth Monday in June.

(7) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the foundation pro-

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gram for the ensuing school fiscal year shall be computed as follows:

(a) after the actual average number belonging for the current school fiscal year has been computed, the normal average number belonging increase is determined by applying the annual percentage increase, as computed in subsection (1) above, to the actual average number belonging for the current school fiscal year;

(b) subtract the actual average number belonging for the current school fiscal year from the approved estimated average number belonging for the ensuing school fiscal year; and

(c) the difference between the amount determined in subsection (7) (b) above and the amount determined in subsection (7) (a) above shall be the maximum allowable increase added to the actual average number belonging for the current school fiscal year for the purpose of establishing the ensuing year's foundation program."

Approved: March 5, 1973.

CHAPTER NO. 114

An Act to Provide that County Treasurers May Take Out Memberships in Certain Organizations at the Expense of the County.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. County treasurers of the state of Montana are authorized and empowered to take out county membership in and to cooperate with associations and organizations of county treasurers of this state for the furtherance of good government and the protection of county interests. Payment for membership in such associations or organizations shall be made from county funds, in such amount as shall be approved by the board of county commissioners.

Approved: March 5, 1973.

CHAPTER NO. 115

An Act Amending Section 5-518, R.C.M. 1947, to Provide for State Commercial and Savings Banks Charging Off Unmarketable Capital Stock as an Investment Loss, as Equivalent to Sale Thereof; and Providing an Effective Date.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 5-518, R.C.M. 1947, is amended to read as follows:

"5-518. **Disposition of acquired stock.** No commercial or savings banks shall purchase or invest its capital or surplus, or money of its depositors, or any part of either, in the capital stock of any corporation, unless the purchase or acquisition of such capital stock shall be necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by such bank within six (6) months thereafter, if it can be sold for the amount of the claim of such bank against it; and all capital stock thus purchased or acquired must be sold for the best price obtainable by said bank within one (1) year after such purchase or acquisition, *or if such stock is unmarketable, it shall be charged off as an investment loss, which shall be equivalent to sale thereof.* Every person or corporation violating any provisions of this section shall forfeit to the state twice the nominal amount of such stock."

Section 2. This act is effective on its passage and approval.

Approved: March 5, 1973.

CHAPTER NO. 116

An Act Amending Section 26-1008, R.C.M. 1947, Requiring Collectors of Fish and Game for Scientific Purposes to be Representatives of Accredited Schools, Colleges, Universities or Other Institutions; Permitting Representatives of Governmental Agencies to Collect Fish or Game for Scientific Study; Limiting Requirement for Collectors' Permits or Licenses to Persons Studying Protected Fish or Game Animals; Providing for Supervision of Collectors' Qualifications by Director of Fish and Game; Allowing Group Use of Permits, and Requiring Reports.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 26-1008, R.C.M. 1947, is amended to read as follows:

"26-1008. **Permit for taking fish or game for scientific purposes.** It shall hereafter be lawful for the duly accredited representative of any *accredited* school, college, university or other institution of learning; *or of any governmental agency* who may be investigating a scientific subject making the same necessary, to take, kill, capture and have in his possession for such purpose, any of the

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birds, fish or animals *protected by Montana law or state fish and game commission regulation,* or to take, kill and capture, *protected or unprotected birds, fish or animals* in any way, except by the explosion of dynamite; provided, that no more of any such birds, fish or animals shall be taken than are necessary for such investigation, and provided also that any person who shall desire to engage in such scientific investigation shall apply to the state director *of fish and game* for a *permit* so to do. *The state director may set qualifications for persons to whom permits are issued and may place special authorizations or special requirements and limitations on any permit.* If the director is satisfied of the good faith *and qualifications* of the applicant, he shall issue to him a permit, which shall place a time limit upon such *collections, may* place a restriction upon the number of birds, fish or animals to be taken thereunder; *and shall require a report of the numbers and species of animals taken by collection area;* and the person to whom such *permit* is issued shall pay therefor the sum of five dollars ($5), and shall have no right or authority to take, have or capture any other or greater number of birds, fish or animals than are mentioned in said *permit. Any representative of an accredited school, college, university or other institution of learning who may have various students or associates assisting him throughout the year may apply to have his permit issued to himself and associates. Such associates, when carrying a copy of the permit, shall have the same authorizations and restrictions as the original applicant. The original applicant shall keep a record of all associates to whom he issued a copy of his permit, the times for which each is issued, and shall be responsible for their use of it, including their report of species and numbers of animals collected.* Any person violating the provisions of this section shall be guilty of a misdemeanor and punishable as provided by section 26-324."

Approved: March 5, 1973.

CHAPTER NO. 117

An Act to Repeal Section 79-813, R.C.M. 1947, Relating to the Disposal of Property Acquired from Escheated Estates; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 79-813, R.C.M. 1947, is repealed.

Section 2. This act is effective on its passage and approval.

Approved: March 5, 1973.

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CHAPTER NO. 118

An Act Determining the Limitation for Loans to a Limited Partner; Amending Section 5-523, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 5-523, R.C.M. 1947, is amended to read as follows:

"5-523. **Limitations on loans—liabilities—what included therein—reduction when excessive.** The total loans to any person, copartnership or corporation by any bank, including loans to a copartnership, and loans to the several members thereof, shall at no time exceed twenty per centum (20%) of the amount of the unimpaired capital and surplus of such bank. The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating the same, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, shall not be considered as money borrowed, nor shall the foregoing limitations apply to loans and investments secured by obligations of the United States having a value of one hundred per cent (100%) of the amount thereof or to loans made on warehouse receipts and bills of lading, when such warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least one hundred twenty per cent (120%) of the amount loaned thereon. Loans or obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States.

The combined liabilities of the several members of any firm, copartnership or unincorporated association to the loaning bank shall be included in the liabilities of such firm, copartnership or unincorporated association, and *that portion of* the liabilities of such firm, copartnership or unincorporated association *for which a member thereof individually shall be legally responsible* shall be included in the liabilities of *the* member in determining the foregoing limitations. *In determining the limitation for loans to a limited partner of a limited partnership, those portions of the laibilities of the limited partnership for which the limited partner is free from liability shall be excluded.*

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When in the judgment of the superintendent of banks, the liabilities of any corporation or the combined liabilities of any corporation and one or more of its stockholders to any bank are excessive, he shall require the reduction thereof to such limits and within such time as he shall prescribe."

Approved: March 5, 1973.

CHAPTER NO. 119

An Act Granting to State Banks the Power to Engage in Any Business or Activity Permitted to National Banks with the Consent of the Department of Business Regulation.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. With the consent of the department of business regulation, every bank organized under the laws of the state shall have power to and may engage in any activity or business in which such bank could engage if it were operating as a national bank. The department of business regulation may prescribe, amend and repeal regulations affecting and controlling the exercise of the powers granted by this act, provided that such regulations and powers shall not apply to activities which are expressly prohibited or limited by the statutes of the state.

Approved: March 5, 1973.

CHAPTER NO. 120

An Act Amending Section 11-2010, R.C.M. 1947, by Clarifying Distance Reqirements for Cities, Towns or Fire Districts Established in an Unincorporated Area to Contract to Furnish or Receive Fire Protection Service; and to Eliminate the One (1) Mile Requirement for Service to Public or Private Parties.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-2010, R.C.M. 1947, is amended to read as follows:

"11-2010. **Trustees of fire districts—mutual aid agreements.** (a) Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town or village, said commissioners may contract with a city, town or private fire company to furnish fire protection for property within

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said district, or shall appoint five qualified trustees to govern and manage the affairs of the fire district, who shall hold office until their successors are elected and qualified, as hereinafter provided. Qualifications of electors and trustees, terms of office, vacancies, manner and date of elections, shall, as far as possible, be the same as provided in the school election laws for school districts of the second class; except, that only electors who are taxpayers affected by the special fire district levies may vote at such elections, and be qualified to serve as trustees; and except, also, there need be no special registration of electors.

(b) Power of trustee. The trustees shall organize by choosing a chairman, and appointing one member to act as secretary. They shall prepare and adopt suitable bylaws; appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies. The trustees shall have the authority to provide adequate and standard fire-fighting apparatus, equipment, housing and facilities for the protection of the district; and shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets, shall, as far as applicable, apply to fire districts.

(c) The trustees of such fire district may contract with the council of any city or town, or with the trustees of any other fire district established in any unincorporated territory, town or village, *which has any boundary line* lying within five (5) *straight line* miles of *any boundary line* of *such* district, whether *the* city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by *the* city or town or by such other fire district, to property included within *such* district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any *such* fire district may elect to make *such* a contract. Likewise, the trustees may contract to permit *such* fire *district's* equipment and facilities to be used by *the* cities, towns, or other fire districts *which have any boundary lines* lying within five (5) *straight line* miles of *any boundary line* of *such* district. Likewise, the trustees may enter into contracts with public or private parties under which *such* district fire company may extend fire protection to public or private property lying outside of *such* district or any other district or city limits, but within five (5) *straight line* miles of *any boundary line* of *such* district, whether such public or private property shall lie within the same county or another county; and *such* district fire company may use *such* fire *district's* equipment and facilities outside of *such* district in the performance of such contracts. All moneys received from such contracts shall be deposited in the county treasurer's office and credited to the fire district fund holding such contracts.

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(d) A mutual aid agreement is an agreement for protection against natural or man-made disasters. Fire district trustees may enter such agreements with the proper authority of

(1) other fire districts

(2) unincorporated municipalities

(3) incorporated municipalities

(4) state agencies which have fire prevention services

(5) private fire prevention agencies

(6) federal agencies."

Approved: March 5, 1973.

CHAPTER NO. 121

An Act Abolishing the Passenger Tramway Safety Board and Transferring Its Functions to the Department of Administration; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 82A-217, R.C.M. 1947, which reads as follows:

82A-217. **Passenger tramway safety board abolished—functions transferred.** The passenger tramway safety board, created in title 69, chapter 66, is abolished, and its functions are transferred to the department of administration. Unless inconsistent with this title, any reference in the Revised Codes of Montana, 1947, to the passenger tramway safety board means the department of administration.

Section 2. This act is effective on June 30, 1973.

Approved: March 5, 1973.

CHAPTER NO. 122

An Act Designating the Department of Health and Environmental Sciences as the Agency to Administer State Funds to be Used For Aiding Local Governments Which Were Not Entitled to State Matching Funds Under the Provisions of Section 69-4808.1, R.C.M. 1947, for Construction of Water Pollution Control Facilities.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Department of health and environmental sciences to administer funds aiding local governments—limit and conditions of funds. (1) The department of health and environmental sciences is designated as the state agency which shall administer and control all funds to be appropriated for the purpose of aiding local governments not entitled to state matching funds under the provisions of section 69-4808.1 for construction of water pollution control facilities, but which are now, under the provisions of the Federal Water Pollution Control Act amendments of 1972 entitled to reimbursable federal grant funding.

(2) This act applies to only publicly owned treatment works on which construction was initiated after June 30, 1966, but before July 1, 1970.

(3) The department of health and environmental sciences shall promulgate rules for the use of the funds.

(4) Any funds appropriated shall in no case exceed twenty-five per cent (25%) of the total cost of the project.

(5) Nothing in this act shall result in any such project receiving state funds where fund participation from all sources, federal and state, shall be in excess of eighty per cent (80%) of the cost of such project.

Approved: March 5, 1973.

CHAPTER NO. 123

An Act to Implement Article XI, Section 3, of the 1972 Montana Constitution by Providing for Optional Forms of County Government; Procedures to Adopt and Initiate an Optional Form of County Government; Adding County Attorney and Clerk of District Court to the List of Offices That May Be Consolidated; Deleting the Nonsuccession Provision for County Treasurer; Amending Sections 16-901, 16-2406 and 16-2412, R.C.M. 1947; and Repealing Sections 16-2403, 16-2407 and 16-3901 through 16-3923, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-901, R.C.M. 1947, is amended to read as follows:

"16-901. **Board, how composed.** Each county *may* have a

board of county commissioners, consisting of three members, whose term of office is six years."

Section 2. Alternative forms of county government authorized. The electors of any county may adopt an alternative form of county government authorized by the provisions of this act. Upon adoption as provided by such act, said alternative form of government shall take the place of the form of government then existing in such county, and the sections of this act, applicable to the adopted alternative form of government, shall be controlling in such county as to all matters to which they relate, and other provisions of the general laws of the state shall be operative therein only insofar as they are not inconsistent with the aforesaid provisions.

Section 3. **Optional forms.** An optional form of county government shall include the elected county official form, the county commissioner form, the manager form and the elected county executive form.

Section 4. **Initiation by county commissioners—petition—resolution—election date.** The board of county commissioners of any county may, by a two-thirds (⅔) vote of the board, or shall, within thirty (30) days upon receipt of a petition signed by fifteen percent (15%) of the electors of the county as determined by the number of votes cast therein for the office of governor at the last preceding gubernatorial election, by resolution submit in a referendum to the electors of the county the question of adopting a new form of county government authorized by this act. If more than one optional form of county government is presented to the county commissioners by petition a primary election shall be held to determine the form to be submitted to the electors in a referendum. It shall be the duty of the board of county commissioners to submit the question at the next regular election or call a special election for the purpose. If a special election is called it shall be held not more than ninety (90) days nor less than sixty (60) days from the passage of the resolution, but not within thirty (30) days of any general election.

(1) The question submitted shall be worded: "Shall the county of.....adopt the form of county government known as the (name of form).....form."

(2) It shall be the duty of the board of county commissioners to publish a notice of the referendum in a daily paper twice a week for a period of three (3) consecutive weeks, or in case there is no daily paper of wide circulation in the county, then in a weekly paper for four (4) consecutive weeks.

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Section 5. **Adoption of optional form—when effective—disapproval.** If a majority of the votes cast on the question of adopting an optional form of county government is in the affirmative, it shall go into effect at a date designated in the petition or resolution; provided, that no elected official then in office, whose position will no longer be filled by popular election, shall be retired prior to the expiration of his term of office, but from and after the establishment of the optional form of county government, his duties shall be such duties as are assigned to him by the person or body administering the optional form of government. If a majority of the voters disapprove, the existing form shall be continued and no new referendum may be held during the next two (2) years following the date of disapproval.

Section 6. **Discontinuance.** A proposition to discontinue an optional form of county government established under this act or to adopt another optional form of county government pursuant to this act may be submitted to the electors of the county at any general election in the manner provided for the submission of an optional form of county government under section 4 of this act.

Section 7. **Adoption of optional form not to affect present acts—transfer of powers.** The adoption or discontinuance of an optional form of county government in any county as provided in this act shall not affect any act done, ratified, or affirmed, or any contract or other right or obligation other than contracts for personal services, accrued or established, or any action, prosecution, or proceeding, civil or criminal, pending at the time such change in form of government takes effect; nor shall the adoption or discontinuance of such form of county government affect such causes of action, prosecutions, or proceedings existing at the time it takes effect; but such rights shall attach to, and actions, prosecutions, or proceedings may be prosecuted and continued, or instituted and prosecuted against, by, or before the department having jurisdiction or power of the subject matter to which such action, prosecution, or proceedings pertains. All rules, regulations, and orders lawfully promulgated prior to such adoption shall continue in force and effect until amended or rescinded in accordance with the sections of this act.

On the effective date of the adoption or discontinuance of an optional form of county government causing a transfer of rights, duties, and powers from one department or office to another, all books, records, papers, documents, property, real and personal, funds, appropriations and balances of appropriations, and pending business in any way pertaining to such rights, powers, and duties shall be similarly transferred.

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Section 8. **Optional form to elect county commissioners at large or by districts—number of members.** (1) Any optional form of county government shall include a board of county commissioners, elected either at large as provided in section 9 of this act, or by districts as provided in section 10 of this act. The method of election shall be determined by inclusion of the method in the optional form adopted pursuant to section 3 of this act.

(2) The board of county commissioners shall consist of such number of members as shall be determined by inclusion of either three (3) or five (5) members in the optional form adopted pursuant to section 3 of this act.

Section 9. **Election of board at large—procedure for change in number of members.** (1) Under all optional forms of county government whereby the entire board of county commissioners is elected at large there shall be a board of county commissioners who shall have the qualifications and shall be nominated and elected as provided by general law, except as otherwise provided for in this section.

(2) If the electors of a county approve a proposition to adopt an optional form of county government under this act and thereby adopt a different size of the board of county commissioners, the change in membership shall be effected as follows:

(a) Whenever the number of members of the board is increased, there shall be elected at the regular state election next following the adoptions of such provision, a sufficient number of county commissioners to bring the total membership of the board up to the number fixed. County commissioners shall first serve a term of six (6) years, except the candidates first elected under the provisions of this section.

(b) Whenever the number of members of the board is decreased, the optional number of county commissioners adopted under this act shall be effective as to the commissioner with the least time left on his term on the first Monday in January following the next regular state election and as to the other half of the decrease on the first Monday in January two (2) years later. The latter decrease in board size shall also be determined by the least time left on his term. Should two (2) commissioners have the same amount of term left to serve, then by lot.

(3) The term of office of county commissioners shall be six (6) years except as provided in this subsection. If the optional form as adopted provides for no change in size of the board of county commissioners, county commissioners shall continue to be elected for six (6) year terms. If the optional form as adopted

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provides for an increased membership on the board of county commissioners as provided in this act, the additional members shall be elected to the board at the first regular state election subsequent to the adoption of the alternative form.

(4) If the first election under an optional form of county government provided for in this act occurs in a year in which one county commissioner is to be elected under the former law and the optional form as adopted provides for an expansion of the board to five (5) commissioners, there shall be elected for a staggered term, two (2) commissioners for a six (6) year term and one (1) commissioner for a four (4) year term, as provided in this act.

(5) At all succeeding elections, after the first regular state election subsequent to adoption of an optional form, all members of the board of county commissioners shall continue to be elected for six (6) year terms.

Section 10. **Election of board by districts.** (1) Under all optional forms of county government whereby any members of the board of county commissioners are elected by districts there shall be a board of county commissioners who shall be nominated and elected as provided by general law, except as otherwise provided for in this section.

(2) The board shall consist of such number of members as provided in the proposition for the optional form that has been adopted.

(3) The division of the county into districts for county commissioners shall conform to the constitutional standards for division of the state into districts for election of members of the legislature. If the proposition for the optional form adopted provides that the county commissioners shall be elected by districts, the board of county commissioners shall, commencing in the first election under an optional form of county government, divide the county into county commissioner districts using the most recent decennial federal census. The districts shall be reapportioned as soon as possible after each decennial federal census becomes available.

Section 11. **Rules of board—meetings and records to be public—majority vote required.** The board of county commissioners shall determine its own rules and order of business and cause a record of its proceedings to be kept. All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection, free of charge. No action of the board shall be valid or binding unless adopted by the affirmative vote of a majority of the members elected to the board.

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Section 12. **Organization of board.** The board of county commissioners shall organize on the first Monday of each year, except when the first Monday of the year falls on a holiday then the board shall organize on the first Tuesday of each year, by the election of one of its members as chairman. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

Section 13. **Powers vested in board of county commissioners.** The powers of a county as a body politic and corporate shall be vested in a board of county commissioners and exercised in the manner provided in this act.

Section 14. **Specific powers and duties of the board.** The board of county commissioners shall:

(1) be the policy determining body of the county, and except as otherwise provided by law, shall be vested with all the powers of the county, including power to levy taxes and to appropriate funds;

(2) have the power to create, organize, alter, consolidate or abolish administrative units and transfer and assign their functions, powers and duties;

(3) have all powers and duties vested in or imposed upon it by the general law, except as otherwise provided for in this act;

(4) provide for the borrowing of money in anticipation of the collection of taxes and revenues for the current fiscal year;

(5) acquire, construct, maintain, administer, rent, and lease property including buildings and other public improvements as provided by law;

(6) cooperate or join by contract pursuant to this act any city, county, state or political subdivision or agency thereof, or with the United States or any agency thereof, for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service; and may provide the terms upon which the county shall perform any of the services and functions of any municipality or political subdivision in the county;

(7) accept, in the name of the county, gifts, devises, bequests, and grants-in-aid from any person, firm, corporation, city, county,

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state, or political subdivision or agency thereof, or from the United States or any agency thereof;

(8) request periodic or special reports by the county executive, county manager, elected officers, and administrative officers and bodies, and may require their attendance upon its meetings;

(9) designate the maximum number of assistants, deputies, clerks, and other persons that may be employed in each of the offices and departments of the county;

(10) authorize the county executive or manager to employ experts and consultants in connection with the administration of the affairs of the county;

(11) establish procedures governing the making of county contracts and the purchasing of county supplies and equipment by competitive bidding;

(12) exercise control over expenditures by all county officials and promulgate and execute an allotment schedule allocating annual appropriation for any county government purpose by item on either a monthly or quarterly basis;

(13) by ordinance or resolution make any rule, or act in any manner provided by general law.

Section 15. **Elected county official form.** (1) Elected county official form defined. The elected county official form of county government shall be that form in which the government is administered by a board of county commissioners and the following subordinate officials may be elected: a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a county auditor, a coroner, and a public administrator.

(2) Modification of regular forms. There may be modification of the elected county official form adopted as hereinafter provided. The number of elected officials may vary by the right of the commissioners to consolidate or combine any two (2) or more offices to cooperate with other units of local government in the sharing of any official.

(3) All the general laws of the state of Montana concerning this form of county government shall apply to the elected county official form of county government, except as provided for in this act.

Section 16. Section 16-2406, R.C.M. 1947, is amended to read as follows:

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"16-2406. **County and other officers, when elected** *or appointed* **and term of office.** There *may* be elected *or appointed* in each county the following county officers who shall possess the qualifications for suffrage prescribed by the constitution of the state of Montana, and such other qualifications as may be prescribed by law:

One (1) county attorney; one (1) clerk of the district court; one (1) county clerk who shall be clerk of the board of county commissioners and ex officio recorder; one *(1)* sheriff; one *(1)* treasurer, who shall be collector of the taxes; one *(1)* county superintendent of schools; one *(1)* county surveyor; one *(1)* assessor; one *(1)* coroner; one *(1)* public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified. *Persons appointed to the different offices serve at the pleasure of the commissioners.*

The county attorneys, county auditors, and all elective township officers, *may* be elected at each general election as now provided by law. The officers mentioned in this act must take office on the first Monday of January next succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election *if elective, and if not elective, the appointee serves at the pleasure of the commissioners;* provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid officers, *or six (6) months prior to the appointment of aforesaid officers,* make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order."

Section 17. Section 16-2412, R.C.M. 1947, is amended to read as follows:

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"16-2412. **Vacancies, how filled.** All vacancies in county and township offices, except county commissioner, are filled by appointment made by the county commissioners. Appointees hold until the vacancies are filled by election *if elective offices, and if non-elective offices, appointees serve at the pleasure of the commissioners.*"

Section 18. **County commissioner form.** County commissioner form defined. The county commissioner form of county government shall be that form in which the government is administered by a board of county commissioners. The county commissioners may appoint those county officials as may be necessary for county operations and establish an adequate compensation plan for the duties required of each official. Those officials shall be appointed with regard to merit only and need not be a resident of the county prior to the time of their appointment. Under this form of county government the board of county commissioners shall have the power to create, organize, alter, consolidate or abolish administrative units of county government and transfer and assign their functions, powers and duties.

Section 19. **Manager form.** (1) Manager appointed or designated. The board of county commissioners may appoint a county manager who shall be the administrative head of the county government which the board has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the board may impose and confer upon the chairman of the board of county commissioners the duties and powers of a manager, as hereinafter set forth, and under such circumstances said chairman shall be considered a full-time chairman. Or the board may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation of all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties.

(2) Duties of the manager. It shall be the duty of the county manager:

(a) to see that all orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs;

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(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

Section 20. **Elected county executive.** (1) Elected county executive form defined. The elected county executive form of government shall be that form in which the government is administered by a single county official, elected at large by the qualified voters of the county. The elected county executive shall be elected in the same manner as the other county officials. The board of county commissioners shall act as the legislative body of the county under this form of county government. The elected county executive shall be responsible for the administration of all departments of the county government. Qualifications for the office of elected county executive shall be the same as those for the board of county commissioners. Compensation for the elected county executive shall be established by the board, commensurate with and comparable to the compensation for a like service in commercial business.

(2) Duties of the elected county executive. It shall be the duty of the elected county executive:

(a) to see that all the orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

(3) Specific powers of the elected county executive. The powers of the elected county executive shall include the power to veto any ordinance or resolution adopted by the board of county commissioners. A veto by the county executive may apply to all or any items of an ordinance appropriating money. Certification of a veto must be made by the county executive within ten (10) days of its adoption by the board of county commissioners, and the board of county commissioners may override the veto by a

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two-thirds (⅔) vote of all its members. Under the elected executive plan an ordinance or resolution shall become effective upon approval by the county executive, expiration of such ten (10) days without approval or veto, or the overriding of a veto.

Section 21. In case of absence or disability of the county executive or manager as determined by the board of county commissioners, his duties shall be performed during his absence or disability by whomsoever the board of county commissioners designates by resolution.

Section 22. **Compensation established by county board—manager—executive.** (1) The board of county commissioners shall establish a schedule of compensation for officers and employees which shall provide uniform compensation for like service, and such compensation shall be commensurate with and comparable to the compensation for a like service in commercial business. The schedule of compensation may establish a minimum and maximum for any class, and an increase in compensation, with the limits provided for by any class, may be granted at any time by the county manager, county executive or other appointing authority upon the basis of efficiency and seniority records. None of the provisions of the law of this state with regard to the appointment or compensation of deputy county officers shall apply hereto.

(2) In the manager plan, the compensation of the county manager shall be fixed by the board of county commissioners.

(3) In the elected county executive plan, the compensation of the county executive shall be fixed by the board of county commissioners one (1) year prior to the county executive's term of office. In the first year, after adopting the county executive form of county government, the compensation for the county executive shall be one hundred fifty percent (150%) of that amount established for a member of the board of county commissioners in that county, figured on the basis of the commissioners working full time.

Section 23. Sections 16-2403, 16-2407 and 16-3901 through 16-3923, R.C.M. 1947, are repealed.

Approved: March 5, 1973.

CHAPTER NO. 124

An Act Providing for the Exemption of Employees of the Department of Fish and Game from Restrictions Relating to the Herding, Driving, Capturing, Taking, Locating or Concentrating of Fish

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or Game by Motor Vehicles, Airplanes, or Snowmobiles While Such Employees are Performing Their Duties; Amending Sections 26-301 and 53-1020, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 26-301, R.C.M. 1947, is amended to read as follows:

"26-301. **Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.** (1) It shall be unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot, or kill, any game animal, or game bird from any self propelled or drawn vehicle, or on, or from any public highway in the state of Montana, or by the aid or with the use of any set gun, jacklight, or other artificial light, trap, snare, salt lick, nor shall any such set gun, jack-light or other artificial light, trap, snare, salt lick or other device to entrap or entice game animals or game birds be used, made or set, nor may rifles be used to hunt or shoot upland game birds unless the use of rifles is permitted by the commission; provided, however, that this does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number ten (10) gauge fired from the shoulder, nor shall any game fish be caught, captured, or taken, or attempted to be caught, captured or taken by the aid or with the use of any gun, or trap, nor shall any such set gun, or trap or other device to entrap game fish be used, made, or set.

(2) (a) No game birds or game or fur-bearing animals shall be killed, taken or shot at from any aircraft, nor shall any aircraft be used for the purpose of concentrating, pursuing, driving, rallying or stirring up any game or migratory birds, game or fur-bearing animals, nor shall any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving or stirring up any game birds, or migratory waterfowl, or game or fur-bearing animals.

(b) No person in an aircraft in the air shall spot or locate any game, or migratory bird, game or fur-bearing animals and communicate the location or approximate location thereof by any signals whatsoever, whether radio, visual or otherwise, to any person or persons then on the ground.

(3) No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence, or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

(4) No person may use a shotgun to hunt, kill or shoot deer except with loads as specified by the commission.

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(5) No person shall chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; provided, however, that livestock owners, employees of the state fish and game commission and of the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, and stock-killing mountain lions, or other means of taking stock-killing bears and stock-killing mountain lions except the use of the dead fall; providing, however, that traps used in capturing bear shall be inspected twice each day, which inspection shall be twelve (12) hours apart; and provided further, that a person may take game birds during the open season thereon with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game director.

(6) The state fish and game commission shall have the power to designate certain waters where set lines may be used to fish for certain species of game or nongame fish, and the commission may designate the number of hooks and lines and the length of line or lines which may be used as set lines.

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the commission shall declare an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging, the taking of paddlefish with long bow and arrow when the commission shall declare an open season when paddlefish may be by taken by long bow and arrow, the taking of walleyed pike, sauger, northern pike and nongame fish with spear or gig when the commission shall declare an open season for taking walleyed pike, sauger, northern pike and nongame fish with spear or gig, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and four (4) feet in width, in such waters as may be designated by the commission.

(8) It shall be unlawful for anyone to use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up or harass game animals, game birds or fur-bearing animals.

(9) Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

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(10) The provisions of this section relating to methods of herding, driving, capturing, taking, locating or concentrating of fish, game animals, game birds or fur-bearing animals do not apply to the department of fish and game, or any employee thereof, while acting within the scope and course of the powers and duties of the department.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law."

Section 2. Section 53-1020, R.C.M. 1947, is amended to read as follows:

"53-1020. **Other unlawful operation.** No person while operating a snowmobile, shall use the same:

(1) For the purpose of driving, rallying or harassing any of the game animals, game birds, or fur-bearing animals of the state, or any livestock, provided, however, that an owner of livestock is not prohibited from managing or driving his own livestock by the use of snowmobiles and may direct other persons to so manage or drive his livestock; *provided further that the department of fish and game, including its duly authorized employees, is not prohibited from managing or driving game animals, game birds or fur-bearing animals by the use of snowmobiles.*

(2) To discharge a firearm from or upon a snowmobile.

(3) Regulation of snowmobile noise. (a) Except as provided in this section, every snowmobile shall be equipped at all times with noise-suppression devices, including an exhaust muffler, in good working order and in constant operation, adequate to comply with the specifications required by the rules and regulations; provided, that the commission may in its discretion establish separate and different rules and regulations applicable to new snowmobiles sold after a date selected by the commission, which shall not be later than June 30, 1972. In any event, from and after June 30, 1972, no new snowmobile, except snowmobiles designed for competition purposes only, shall be sold, or offered for sale, unless such vehicle is certified by the manufacturer as being able to conform with the sound level limitation of not more than eighty-five (85) decibels on a scale "A" (dBA) at fifteen (15) feet. Sound-pressure levels in decibels shall be measured on "A" scale of a sound-level meter having characteristics defined by American standards association S1, 4-1966 "General Purpose Sound Meter." Measurements shall be made in accordance with applicable practices outlined in the "Procedure for Sound Level Measurements of Snowmobiles" used by the international snowmobile industry association (January, 1969), or with

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such other standards for measurement of sound level as the commission may adopt.

(b) After a date selected by the commission, but not later than June 30, 1972, no new snowmobile not equipped with noise-suppression devices adequate to comply with the specifications required by the rules and regulations of the commission or the specification set forth in the preceding paragraph, whichever are more restrictive, shall be sold or offered for sale unless a separate placard, identifying that such snowmobile is not so equipped, is conspicuously and permanently affixed thereto.

(c) This section does not apply to organized races or similar competitive events held on (1) private lands, with the permission of the owner, lessee, or custodian of the land, or (2) public lands, with the consent of the public agency having the authority to grant such consent; provided that total sound produced by such event shall not exceed the specifications required by the rules and regulations of the commission after the effective date of the rules and regulations, and provided, that in any event, from and after June 30, 1971, total sound produced by such event shall not exceed (50) decibels on scale "A" (dBA) at any point fifteen (15) feet or more outside the boundaries of the area designated for such event.

(4) Upon a railroad right of way or railroad track, provided, however, it shall not be unlawful for officers or employees of any railroad operating over said tracks from operating snowmobiles thereon."

Approved: March 5, 1973.

CHAPTER NO. 125

An Act Amending Section 23-3202, R.C.M. 1947, Providing that Election Judges Must Be Members of the Political Party They Represent.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 23-3202, R.C.M. 1947, is amended to read as follows:

"23-3202. **Manner of choosing election judges and clerks—vacancies—candidates and their relatives ineligible—exceptions.** (1) The election judges and clerks shall be chosen from lists of qualified voters submitted by the two (2) major political parties thirty-five (35) days or more before the commissioners meeting which precedes the next primary election.

(2) The list of each party may contain twice the number of election judges and clerks to be appointed and not more than a majority may be appointed from one (1) political party for each precinct. *Judges so appointed must be a member of the political party they are to represent.*

(3) The commissioners may appoint election judges and clerks in their discretion to fill vacancies or if a major political party fails to submit a list of election judges.

(4) No person shall be appointed to serve as an election judge or election clerk who is a candidate, spouse of a candidate, or related to a candidate for office within the second degree of consanguinity. However, this subsection does not apply to school district elections nor to candidates for precinct committeeman or committeewoman."

Approved: March 5, 1973.

CHAPTER NO. 126

An Act Providing that Lists Furnished to the Clerks and Recorder Under Section 91-4458, R.C.M. 1947, Shall Be Used By the Clerks and Recorder to Cancel the Registration of Deceased Electors from the Election Rolls.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 23-3030, R.C.M. 1947, which reads as follows:

23-3030. Each county clerk shall immediately cancel all registrations of individuals reported as deceased by the department of health and environmental sciences in the department's reports submitted to the county under section 91-4458, R.C.M. 1947.

Approved: March 5, 1973.

CHAPTER NO. 127

An Act Amending Section 16-1803, R.C.M. 1947, to Require Counties to Let for Bid All Contracts Calling for Construction or Purchases in Excess of Four Thousand Dollars ($4,000) After Advertisement for Bids.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-1803, R.C.M. 1947, is amended to read as follows:

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"16-1803. **Procedure when request for bids is necessary in making contracts for purchases and for construction of buildings exceeding** *four thousand dollars ($4,000).* (1) No contract shall be entered into between a board of county commissioners for the purchase of any automobile, truck, or other vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind for which must be paid a sum in excess of four thousand dollars ($4,000), or for the construction of any building, for which must be paid a sum in excess of *four thousand dollars ($4,000)* without first publishing a notice calling for bids for furnishing the same, which notice must be published at least once a week, for three (3) consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided that the provisions of this section shall not apply to contracts for public printing entered into in accordance with the provisions of chapter 12 of Title 16 and provided further, that the provisions of this section shall not apply to contracts for purchases, which in the opinion of the board, are made necessary by fires, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, mischief, or for the relief of a stricken community overtaken by calamity.

(2) When the amount to be paid as the purchase price for any automobile, truck, or other vehicle, or road machinery of any kind, or for any other machinery, apparatus, appliance or equipment, or for any materials or supplies of any kind, shall exceed one thousand dollars ($1,000.00) the board of county commissioners may provide for the payment of such purchase price in installments extending over a period of not more than three (3) years; provided that when the purchase price is extended over a term of two (2) years or at least forty (40%) per cent thereof shall be paid the first year and the remainder the second year and when such purchase price is extended over a term of three (3) years at least one-third (1/3) of such purchase price to be paid each year; provided that, at the time of entering into the agreement for such purchase, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the purchase price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

(3) Every contract entered into for the rental of machinery,

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equipment, apparatus, appliances, materials or supplies of any kind, which shall provide for payment of rental, by the county, and that after a certain fixed amount has been paid as rental, the property shall become the property of the county, or any other similar provisions or conditions, shall be deemed and construed to be a contract for sale of such property, and all of the provisions of this section shall apply thereto and govern and control the same."

Approved: March 5, 1973.

CHAPTER NO. 128

An Act Amending Section 44-411, R.C.M. 1947, to Transfer the Responsibility for Indexing the Laws of Montana from the Law Librarian to the Legislative Services Division of the Legislative Council; and Repealing Section 44-412, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 44-411, R.C.M. 1947, is amended to read as follows:

"44-411. **Index to session laws.** It shall be the duty of the *legislative services division of the legislative council* to prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislative assembly of Montana. Such index shall be a thorough index of such laws and resolutions, and of each subject contained in or covered by such laws and resolutions, together with such cross-index as will assist in readily finding any subject or matter contained in such volume; and for the purpose of procuring and preserving uniformity in such indexes, the index of each succeeding volume of the session laws shall conform, as near as practicable, with those of the volumes preceding it. *There* shall also *be prepared* for each volume of such laws an additional index, showing what sections of the several codes of this state, and what session laws have been amended, repealed, altered, or changed by any laws published in that volume, which shall be known and designated as the "code index." "

Section 2. Section 44-412, R.C.M. 1947, is repealed.

Approved: March 5, 1973.

CHAPTER NO. 129

An Act to Provide that a County Attorney Be Elected in Each County for a Four (4) Year Term; and Amending Section 16-2406, R.C.M. 1947.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-2406, R.C.M. 1947, is amended to read as follows:

"16-2406. **County and other officers, when elected and term of office.** There shall be elected in each county the following county officers who shall possess the qualifications for sufferage prescribed by the constitution of the state of Montana, and such other qualifications as may be prescribed by law:

One *county attorney; one* county clerk who shall be clerk of the board of county commissioners and ex officio recorder; one sheriff; one treasurer, who shall be collector of the taxes; provided, that the county treasurer shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified.

County auditors, and all elective township officers, must be elected at each general election as now provided by law. The officers mentioned in this act must take office on the first Monday of January next succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be intitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid officers, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order."

Approved: March 5, 1973.

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CHAPTER NO. 130

An Act to Amend Section 16-1008A, R.C.M. 1947, to Allow the County Commissioners and Five (5) Lay Members Appointed By Them to Manage County Buildings and Improvements.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-1008A R.C.M. 1947, is amended to read as follows:

"16-1008A. **Erection and management of county buildings and other improvements.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected, furnished and maintained a courthouse, jail, hospital, civic center, youth center, park buildings, museums, recreation centers, and any combination thereof, and such other public buildings as may be necessary.

The board of county commissioners shall have the power to create a commission for the management of such civic center, youth center, park buildings, museums, county parks, recreation centers, hospitals, or any combination of two (2) or more thereof. Such commission shall be composed of the chairman of the board of county commissioners and five (5) lay members to be appointed by the board of county commissioners, and their terms of office shall be respectively one (1) for one (1), two (2) for two (2), and two (2) for three (3) years, and on the expiration of such terms of one (1), two (2) and three (3) years, their successors shall hold for three (3) years each, and all of the above persons shall serve without compensation. In cases where a commission has been appointed, the commission together with the board of county commissioners shall have the power to employ a manager.

A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore been, or which may hereafter be, erected and furnished under the provisions of this act may also be used for the hospitalization of the nonindigent sick, provided said nonindigent sick pay a reasonable fee for such hospitalization, and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by nonindigents. The board of county commissioners of any county of this state which now has, or may hereafter acquire, title to a site and building, or buildings, suitable for county hospital purposes, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to furnish and equip such

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building, or buildings, for hospital purposes in accordance with and as provided by the provisions of this act."

Approved: March 5, 1973.

CHAPTER NO. 131

An Act Requiring Cities and Towns Making the All-purpose Levy to Deposit Money Received from other Sources in the All-purpose General Fund and Requiring that the Provisions of the All-purpose Levy Statutes be Construed in Conjunction with the Municipal Budget Law.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Cities and towns making the all-purpose annual mill levy shall deposit into the all-purpose general fund all money received from other sources, including fees, charges and fines received from the operation of airports, libraries, swimming pools, parking lots, golf courses and any other operation supported in part or whole from an appropriation of the all-purpose levy, and not otherwise provided by law.

Approved: March 5, 1973.

CHAPTER NO. 132

An Act Amending Section 23-3001, R.C.M. 1947, Relating to the Highway Patrol Submitting New-voter Lists; and by Providing that the Lists be Prepared in Quadruplicate.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 23-3001, R.C.M. 1947, is amended to read as follows:

"23-3001. **Highway patrol to submit new-voter lists to major political parties.** No later than January 31 in any year in which a general election is held, the Montana highway patrol shall submit to the chairman of each major political party of the state, *four (4) copies of* a list prepared from its driver license registration files, showing names and addresses of all persons, compiled on a county by county basis, who have reached voting age since the last general election and those who will reach voting age before the date of the general election. No official of the Montana high-

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way patrol shall be responsible for any honest error or omission in preparing the lists."

Approved: March 5, 1973.

CHAPTER NO. 133

An Act Amending Section 35-103, R.C.M. 1947, Providing that an Elderly Family is one the Head of Which Is Sixty (60) Years of Age or Older.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 35-103, R.C.M. 1947, is amended to read as follows:

"35-103. **Definitions.** The following terms, wherever used or referred to in this act shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "Housing Authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this act for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "City" shall mean any city which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(3) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(4) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor respectively.

(5) "Municipality" shall mean any city, town or incorporated village, which is located within the territorial boundaries of an authority.

(6) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this act.

(7) "Government" shall include the state and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(8) "State" shall mean the state of Montana.

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(9) "Federal government" shall include the United States of America, the federal emergency administration of public works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(10) "Housing project" shall include all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking (a) to demolish, clear, remove, alter or repair unsanitary or unsafe housing, and/or (b) to provide safe and sanitary dwelling accommodations for persons of low income. The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(11) "Community facilities" shall include real and personal property, and buildings and equipment for recreational or social assemblies, for educational, health or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority and/or the occupants of the dwelling accommodations.

(12) "Bonds" shall mean any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to this act.

(13) "Mortgage" shall include deeds of trust, mortgage, building and loan contracts or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(14) "Trust indenture" shall include instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

(15) "Contract" shall mean any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(16) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(17) "Obligee of the authority" or "obligee" shall include

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any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees of such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority.

(18) "Persons of low income" shall mean persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(19) "Elderly families" shall mean families the head of which (or his spouse) is *sixty (60)* years of age or over and who otherwise qualify as "persons of low income" within the meaning of the definition set forth in (18) above."

Approved: March 5, 1973.

CHAPTER NO. 134

An Act Amending Section 11-3909, R.C.M. 1947, Relating to the Disposal of Real Property in Areas of Urban Renewal.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-3909, R.C.M. 1947, is amended to read as follows:

"11-3909. **Disposal of property in urban renewal area.** (a) A municipality may sell, lease, or otherwise transfer real property or any interest therein acquired by it for an urban renewal project, in an urban renewal area for residential, recreational, commercial, industrial, or other uses or for public use, and may enter into contracts with respect thereto, or may retain such property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets, and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this act. Provided, that such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors

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and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin, within a reasonable time, any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account, and give consideration to, the uses provided in such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by, the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any and all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan. The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions (including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof) shall not prevent the recording of such contract or conveyance in the land records of the clerk and recorder or the county in which such city or town is located, in such manner as to afford actual or constructive notice thereof.

(b) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality *shall,* by public notice by publication once each week for three consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite *proposals* from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof

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and shall state that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all redevelopment or rehabilitation *proposals* and the financial and legal ability of the persons making such *proposals* to carry them out. The municipality may accept such *proposals* as it deems to be in the public interest and in furtherance of the purposes of this act. Thereafter, the municipality may execute, in accordance with the provisions of subsection (a), and deliver contracts, deeds, leases, and other instruments of transfer.

(c) A municipality may operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment, without regard to the provisions of subsection (a) above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan. Provided, however, that the municipality may, after a public hearing, extend the time for a period not to exceed three years."

Approved: March 5, 1973.

CHAPTER NO. 135

An Act Prohibiting the Filing of False Mining Claims; Providing for a Penalty; and Providing for an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Every person who shall offer any location certificate for a placer mining claim, or lode claim, or affidavit of assessment work to be filed in an office of a county clerk of this state on behalf of himself, or for any other person, or any person who shall procure others to do so, knowing that such claim, or certificate or affidavit was not preceded by a proper location of the claim physically upon the ground by the establishment of a proper notice of claim and the designation of the surface boundaries of the claim by substantial posts or monuments as required by the laws of the state shall be punished by imprisonment in the state penitentiary for not more than five (5) years, or by a fine of not more than five thousand dollars ($5,000), or by both.

Section 2. This act is effective on its passage and approval.

Approved: March 5, 1973.

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CHAPTER NO. 136

An Act Transferring the Office of State Treasurer to the Department of Administration for Administrative Purposes only, to Comply with Article VI, Section 7 of the 1972 Montana Constitution.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. (1) The office of state treasurer is transferred to the department of administration for administrative purposes only as prescribed in section 82A-108, R.C.M. 1947, except:

(1) the state treasurer shall continue his fiscal duties as prescribed by law, and section 82A-108(2)(c) does not apply; and

(2) the state treasurer may hire his own personnel, and section 82A-108(2)(d) does not apply.

Approved: March 5, 1973.

CHAPTER NO. 137

An Act to Amend Sections 16-514, 75-5707, 75-6503, 75-6517, 75-6532, 75-6534, 75-6806, 75-6906 through 75-6908, 75-6915, 75-6916, 75-6927, and 75-8107, R.C.M. 1947; to Eliminate the Census of School Age Children; and to Provide for the Distribution of Interest and Income Moneys through State Equalization Aid to Comply with Article X, Section 5(1) of the 1972 Montana Constitution; and to Repeal Sections 75-5708, 75-5810, 75-5936 through 75-5938, and 75-6909 through 75-6911, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-514, R.C.M. 1947, is amended to read as follows:

"16-514. **School and road funds.** The county superintendent of schools of the old county, or each of the old counties, respectively, shall furnish the county superintendent of schools of the new county with a *certification of the ANB in* the different school districts in the territory set apart to form the new county, and shall certify to the board of county commissioners the amount due; and said board shall order a warrant drawn on the treasurer of the new county for all the money that is or may be due by any apportionment or otherwise to the different school districts embraced in the new county from his county; and the county treasurer shall certify to the county commissioners the amount

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due in the different road funds, and the county commissioners shall order a warrant drawn on the treasurer of their county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county from their county, which said amounts shall be properly credited in both counties. And whenever, in the formation of a new county, a road or school district has been divided, the board of county commissioners shall, by resolution, direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county."

Section 2. Section 75-5707, R.C.M. 1947, is amended to read as follows:

"75-5707. **Powers and duties.** The superintendent of public instruction shall have the general supervision of the public schools and districts of the state, and he shall have the power and shall perform the following duties or acts in implementing *and* enforcing the provisions of this Title:

(1) resolve any controversy resulting from the proration of joint costs by a joint board of trustees under the provisions of section 75-5929;

(2) issue, renew or deny teacher certification and emergency authorizations of employment and give notice of teacher certification suspension or revocation proceedings to be conducted by the board of education in accordance with the provisions of the teacher certification chapter of this Title;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of section 75-6318;

(4) pay the tuition for the residents of the Montana children's center at Twin Bridges high school in accordance with the provisions of section 75-6319;

(5) serve on the teachers' retirement board in accordance with the provisions of section 75-6203;

(6) prescribe absentee voting forms and rules in accordance with the provisions of section 75-6416;

(7) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of section 75-6528;

(8) approve or disapprove the opening or reopening of a school in accordance with the provisions of sections 75-6602, 75-6603, 75-6604, or 75-6605;

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(9) approve or disapprove school isolation within the limitations prescribed by section 75-6608;

(10) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of section 75-6702, and prescribe the school budget format in accordance with the provisions of section 75-6704 and 75-7209;

(11) establish a system of communication for calculating joint district revenues in accordance with the provisions of section 75-6721;

(12) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in section 75-6725, and publish rules and regulations for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of section 75-6729;

(13) generally supervise the school financial administration provisions as prescribed by section 75-6802;

(14) appoint the responsible county officials for the performance of the budgeting duties and the financial administration duties for a joint district in accordance with the provisions of sections 75-6720 and 75-6803;

(15) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of subsection (5) of section 75-6806, and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of section 75-5809;

(16) approve, disapprove or adjust an increase of the average number belonging (ANB) in accordance with the provisions of sections 75-6903 and 75-6904;

(17) distribute state equalization aid in support of the foundation program in accordance with the provisions of section 75-6908, 75-6918, and 75-6919;

(18) estimate the statewide equalization level for the foundation program in accordance with the provisions of section 75-6920; available to each *public elementary* district.

(19) distribute state impact aid in accordance with the provisions of section 75-6925;

(20) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of section 75-7005;

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(21) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of section 75-7207;

(22) request, accept, deposit and expend federal moneys in accordance with the provisions of section 75-7303;

(23) authorize the use of federal moneys for the support of an interlocal co-operative agreement in accordance with the provisions of sections 75-7306 and 75-7307;

(24) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of section 75-7308;

(25) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of sections 75-7404 and 75-7405;

(26) recommend standards of accreditation for all schools to the board of education, and evaluate compliance with such standards and recommend accreditation status of every school to the board of education in accordance with the provisions of sections 75-7501 and 75-7502;

(27) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of sections 75-7505 and 75-7506;

(28) recommend the scope of conservation education in the schools to the board of education in accordance with the provisions of section 75-7509;

(29) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of section 75-7511;

(30) license textbook dealers, maintain a textbook library, initiate prosecution of textbook dealers violating the law, and supply a textbook listing in accordance with the provisions of the textbooks chapter of this Title;

(31) administer and perform the duties as the executive officer of the board of education for vocational education in accordance with the provisions of section 75-7703;

(32) consider applications for the designation of a post-secondary vocational-technical center in accordance with the provisions of section 75-7707;

(33) establish a fund for the handling of post-secondary vocational-technical center fees in accordance with the provisions of section 75-7714;

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(34) supervise and co-ordinate the conduct of special education in the state in accordance with the provisions of section 75-7803;

(35) administer the traffic education program in accordance with the provisions of section 75-7904;

(36) administer the school *food* services program in accordance with the provisions of sections 75-8002, 75-8003, and 75-8004;

(37) determine the result of an organization election for a community college district and the related election of trustees in accordance with the provisions of section 75-8112;

(38) review school building plans and specifications in accordance with the provisions of section 75-8206;

(39) publish and distribute fire danger books in accordance with the provisions of section 75-8309;

(40) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of section 75-8310; and

(41) perform any other duty prescribed from time to time by this Title, any other act of the legislature, or the policies of the board of education."

Section 3. Section 75-6503, R.C.M. 1947, is amended to read as follows:

"75-6503. **District classification.** Each elementary district shall have a classification of:

(1) first class, if it has a population of six thousand five hundred (6,500) or more;

(2) second class, if it has a population of one thousand (1,000) or more but less than six thousand five hundred (6,500); or

(3) third class, if it has a population of less than one thousand (1,000). The population of an elementary district shall be determined by the county superintendent on the basis of the best available population information for the district.

The county superintendent shall establish the classification of each elementary district in the county on the basis of the population determined for the district and the district classification criteria prescribed in this section. Whenever the population of an elementary district increases or decreases requiring an adjustment of the district classification according to the criteria

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prescribed in this section, the county superintendent shall declare such district's classification to be changed in accordance with the determined population, except that the classification of an elementary district shall not be changed more than once every five (5) years.

Whenever the county superintendent changes an elementary district's classification with the result that a larger number of trustees is required on the elementary board of trustees, the increased number of trustee positions shall be filled in the manner provided for filling trustee vacancies. Such positions shall be subject to election on the next regular school election day. If the county superintendent changes an elementary district's classification with the result that a lesser number of trustees is required, the next elementary trustee positions that become vacant under any circumstances shall not be filled until the number of elementary trustee positions has been reduced to the number required by law.

The classification of a high school district shall be the same as the classification of the elementary district where the high school building is located. Whenever the classification of such elementary district is changed, the classification of a high school district shall be changed accordingly, and the county superintendent shall adjust the number of additional high school district trustee positions in accordance with the method prescribed in section 75-5905 for the determination of the number of additional trustee positions required for a high school district. An increased number of trustee positions shall be filled by the appointment of the county superintendent and such positions shall be subject to election at the next regular trustee election. When the number of positions is decreased, the next additional high school trustee positions that become vacant under any circumstances shall not be filled until the number of trustee positions has been reduced to the number required by law."

Section 4. Section 75-6517, R.C.M. 1947, is amended to read as follows:

"75-6517. **Limitations for creation of new elementary district.** A new elementary district may be created out of the territory of an existing elementary district or districts when:

(1) the taxable value of the taxable property of the territory proposed to be included in such new district is seventy-five thousand dollars ($75,000) or more, except that when fifty thousand (50,000) acres or more of such new district are nontaxable Indian land, this limitation shall not be applicable;

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(2) the taxable value of the taxable property of each existing district from which territory would be detached will be seventy-five thousand dollars ($75,000) or more after the territory is detached; and

(3) the *ANB* in any of the existing districts is not reduced to less than fifteen (15)."

Section 5. Section 75-6532, R.C.M. 1947, is amended to read as follows:

"75-6532. **Cash disposition when district ceases to exist.** Whenever a district shall cease to exist in any manner prescribed in this Title except when districts are consolidated, the cash on hand to the credit of the funds of the district and the debts of such district shall be allocated in the following manner:

(1) Any cash to the credit of the district shall be used to pay any debts of the district, including bonded indebtedness, except that any cash available in the debt service fund shall be used first to pay bond interest and all outstanding bonds.

(2) If any cash remains to the credit of the district after paying its debts, the cash shall be transferred by the county treasurer to the credit of the district or districts assuming its territory.

When the territory is assumed by more than one *(1)* district, the remaining cash shall be prorated between the districts on the basis of the number of children *attending school and* residing within the territory assumed by each district as determined by the county superintendent.

(3) If any debts, other than bonded indebtedness remain as an obligation of the district after the cash has been utilized under the provisions of subsection (1) above, the debts shall be assigned in the same manner prescribed for the transfer of cash under subsection (2) above."

Section 6. Section 75-6534, R.C.M. 1947, is amended to read as follows:

"75-6534. **Cash disposition when new elementary district created.** Whenever a new district is created, under the provisions of section 75-6518, the end-of-the-year cash balance in each fund of each district having territory that has been placed in the new district, except the debt service fund, shall be apportioned by the county superintendent on the basis of the proportion that the number of school children residing in the new district is of the total number of school children residing in the old district before the creation of the new district. After the new district has operated

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a school for one (1) month, the county superintendent shall order the county treasurer to transfer the cash to which the new district is entitled to the credit of the fund of the new district which corresponds with the fund from which it was transferred. The new district shall not assume any debts of the old district other than existing bonded indebtedness which remains an obligation against the taxable property of the territory included in the new district."

Section 7. Section 75-6806, R.C.M. 1947, is amended to read as follows:

"75-6806. **Duties of trustees.** The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person, other than the trustees, acting as a governing board, shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school moneys for each fund maintained by the district in accordance with rules and regulations prescribed by the superintendent of public instruction. The record of such accounting shall be open to public inspection at any meeting of the trustees;

(2) excepting payments under employee contracts, authorize all expenditures of district moneys by the written approval of claims for such expenditures, and cause warrants to be issued for the payment of approved claims and payments under employee contracts;

(3) have the authority to issue warrants on any budgeted fund in anticipation of budgeted revenues, except that such expenditures shall not exceed the amount budgeted for such fund;

(4) invest any moneys of the district in accordance with subsection (2) of section 16-2050 or subsection (8) of section 16-2618, R.C.M. 1947, whichever is applicable, whenever in the judgment of the trustees such investment would be advantageous to the district;

(5) report annually to the county superintendent not later than the first day of August, the financial activities of each fund maintained by the district during the last completed school fiscal year on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated;

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(6) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of education;

(7) cause the accounting records of the district to be audited annually as required by law; and

(8) perform, in the manner permitted by law, such other fiscal duties that are in the best interests of the district."

Section 8. Section 75-6906, R.C.M. 1947, is amended to read as follows:

"75-6906. **Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount, and nonisolated school foundation program financing.** As used in this title, the term "foundation program" shall mean the minimum operating expenditures as established herein, that are sufficient to provide for the educational program of a school. It shall be financed by (1) county equalization moneys, (2) state equalization aid, and (3) when required, moneys from an additional county levy for a state deficiency. The foundation program relates only to those expenditures authorized by a district's general fund budget and shall not include expenditures from any other fund.

The dollar amount of the foundation program shall be eighty per cent (80%) of the maximum-general-fund-budget-without-a-voted-levy limitation as set forth in the schedules in section 75-6905. The foundation program of an elementary school having an ANB of nine (9) or fewer pupils which is not approved as an isolated school under the provisions of section 75-6608 shall be eighty per cent (80%) of the schedule amount but the county and state shall participate in financing one-half (½) of the foundation program and the district shall finance the remaining one-half (½) by a tax levied on the property of the district. When a school of nine (9) or fewer pupils is approved as isolated under the provisions of section 75-6608, the county and state shall participate in the financing of the total amount of the foundation program."

Section 9. Section 75-6907, R.C.M. 1947, is amended to read as follows:

"75-6907. **Definition of interest and income moneys.** As used in this Title, the term "interest and income moneys" *means* the total of the following revenues, as provided *for by* article *X, section 5* of the *1972 Montana constitution:*

(1) ninety-five per cent (95%) of the interest received from the investment of the public school fund;

(2) ninety-five per cent (95%) of the interest received from

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the investment of any other school funds held in trust by the state board of land commissioners;

(3) ninety-five per cent (95%) of the income received from the leasing of state school lands after any deductions that may be made under the provisions of chapter 24 of Title 81, R.C.M. 1947; and

(4) ninety-five per cent (95%) of any other income derived from any other covenant affecting the use of state school lands.

The remaining five per cent (5%) of such revenues shall be annually credited to the public school fund."

Section 10. Section 75-6908, R.C.M. 1947, is amended to read as follows:

"75-6908. **Distribution of interest and income moneys by superintendent of public instruction.** The state board of land commissioners shall annually deposit the interest and income moneys for each calendar year *into the earmarked revenue fund for state equalization aid provided for by section 75-6916, R.C.M. 1947,* by the last business day of February following the calendar year in which the moneys were received."

Section 11. Section 75-6915, R.C.M. 1947, is amended to read as follows:

"75-6915. **Formulas for apportionment of county equalization moneys.** After making such deductions prescribed in section 75-6914, the county superintendent shall apportion the remaining amount of moneys available in the basic county tax account to the several *public* elementary districts of the county and in the basic special tax for high schools account to the several public *secondary* districts of the county in proportion to their needs under the foundation program in accordance with the following procedure:

(1) Determine the percentage that the county equalization moneys available for the support of the foundation programs of the *public elementary districts* in the county is of the total amount of the foundation programs of all *public elementary districts.*

(2) Multiply the foundation program amount of each *public elementary* district by the percentage determined in subsection *(1)* above to determine the portion of the county equalization moneys available to each *public elementary* district.

The above procedure shall also be applied for public secondary districts.

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No district shall be deprived of its needful share of the county moneys apportioned under this section by reason of it being non-accredited. Nor shall any territory situated within a county be excluded from the apportionment of the county equalization moneys under this section solely because such territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year shall not be considered in the apportionment procedure prescribed in this section.

When the total amount of the available county moneys for apportionment under this section is greater than the amount of money to be apportioned under the apportionment procedure prescribed by this section, the excess amount of county moneys shall be retained by the county to be considered as financing during the ensuing school fiscal year under the requirements of subsection (5) of section 75-6912 or subsection (1) of section 75-6913.

The county equalization moneys apportioned under these procedures shall constitute the first source of revenue in calculating the financing of the *public elementary and secondary* district foundation program. The county superintendent shall use the apportionment procedure prescribed in this section **in computing the estimated revenues for the financing of the ensuing year's foundation program for budgeting purposes."**

Section 12. Section 75-6916, R.C.M. 1947, is amended to read as follows:

"75-6916. **Definition of and revenue for state equalization aid.** *The following* shall be paid into the earmarked revenue fund, for state equalization aid to public schools of the state:

(1) twenty-five per cent (25%) of all moneys received from the collection of income taxes under chapter 49 of Title 84, R.C.M. 1947,

(2) twenty-five per cent (25%) of all moneys received from the collection of corporation license taxes under chapter 15 of Title 84, R.C.M. 1947, as provided by section 84-1901, R.C.M. 1947,

(3) one-half (½) of the moneys received from the treasurer of the United States as the state's shares of oil and gas royalties under the Act of Congress of February 25, 1920, *and*

(4) interest and income moneys described in sections 75-6907 and 75-6908, R.C.M. 1947.

As used in this Title, the term "state equalization aid" *means* those moneys deposited in the earmarked revenue fund as required in this section plus any legislative appropriation of moneys from

other sources for distribution to the public schools for the purpose of equalization of the foundation program."

Section 13. Section 75-6927, R.C.M. 1947, is amended to read as follows:

"75-6927. **Proration and calculation of foundation program for a joint district.** In joint districts, the foundation program shall be prorated among the counties in which any part of the joint district is located for the purpose of determining the amount of each source of revenue for the foundation program for which each county is obligated. The proration of the joint district foundation program shall be calculated as follows:

(1) Divide the joint district foundation program by the ANB of the joint district to determine the per ANB amount of the foundation program.

(2) Determine the ANB for each county's portion of the joint district on the basis of each pupil's resident county. When taken together, the sum of the ANB assigned to all the counties shall equal the total ANB for the joint district.

(3) Multiply the per ANB amount of the foundation program determined in subsection (1) by the ANB for each county's portion as determined in subsection (2) to determine the portion of the foundation program for each county.

The portion of a joint district foundation program for each county, as determined in subsection (3) of this section, shall be considered as a separate foundation program in such county for the purposes of calculating the various revenues for the foundation program. After the calculation of the foundation program revenues, the remainder of the general fund revenues shall be calculated in accordance with the provisions for general fund financing."

Section 14. Section 75-8107, R.C.M. 1947, is amended to read as follows:

"75-8107. **Election of trustees, districts from which elected and terms of office.** The regents shall provide for the election of trustees of the proposed community college district at the election held for the approval of its organization. Seven (7) trustees shall be elected at large, except that should there be in such proposed community college district one *(1)* or more high school districts or part of a high school district within the community college district with more than forty-three per cent (43%) and not more than fifty per cent (50%) of the total *population* of the proposed district, as determined by the last census, then each such district

or part of district shall elect three (3) trustees and the remaining trustees shall be elected at large from the remainder or the proposed community college district. Should any such high school district or such part of a high school district have more than fifty per cent (50%) of the *population* of the proposed district, then four (4) trustees shall be elected from such high school district or such part of high school district and three (3) trustees at large from the remainder of the proposed community college district. If the trustees are elected at large throughout the entire proposed community college district, the one receiving the greatest number of votes shall be elected for a term of seven (7) years, the one receiving the next greatest number of votes, for a term of six (6) years, the one receiving the next greatest number of votes, for a term of five (5) years, the one receiving the next greatest number of votes for a term of four (4) years, the one receiving the next greatest number of votes for a term of three (3) years, the one receiving the next greatest number of votes for a term of two (2) years, and the elected one receiving the least number of votes for a term of one (1) year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the trustees elected shall determine by lot the one who shall serve for seven (7) years, the one who shall serve for six (6) years, the one who shall serve for five (5) years, the one who shall serve for four (4) years, the one who shall serve for three (3) years, the one who shall serve for two (2) years, and the one who shall serve for one (1) year. Thereafter, all trustees elected shall serve for terms of seven (7) years each."

Section 15. Sections 75-5708, 75-5810, 75-5936 through 75-5938, and 75-6909 through 75-6911 are repealed.

Approved: March 5, 1973.

CHAPTER NO. 138

An Act to Repeal Sections 3-2201, 3-2201.1, 3-2202, 3-2203, 3-2204, 3-2205, 3-2207, 3-2209, 3-2210, 3-2211, and 3-2212, R.C.M. 1947, Relating to Poultry Improvement.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Sections 3-2201, 3-2201.1, 3-2202, 3-2203, 3-2204, 3-2205, 3-2207, 3-2209, 3-2210, 3-2211, and 3-2212, R.C.M. 1947, are repealed.

Approved: March 5, 1973.

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CHAPTER NO. 139

An Act to Provide for a Special License Classification and Fee for the Hunting, Shooting and Taking of Mountain Lion; Amending Section 26-202.1, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 26-202.1, R.C.M. 1947, is amended to read as follows:

"26-202.1. **Licenses—fees—classifications of licenses—fees and powers under licenses.** (1) Class A license—Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of four dollars ($4) shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 license—Resident Game Bird License. Except as herein provided, any resident as defined by section 26-202.3, who is twelve (12) years of age or older, may, upon payment of a fee of two dollars ($2) receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the commission.

(a) No hunting licenses shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any one of the following: a Class A-3, A-4, A-5, B-2, B-5 or B-6 license, may upon payment of an additional sum of three dollars ($3) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer,

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antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, three dollars ($3); Class A-4, Deer B Tag, five dollars ($5); Class A-5, Elk Tag, three dollars ($3); Class A-6, Black or Brown Bear Tag, five dollars ($5); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

(5) Class B license—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of fifteen dollars ($15) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

(7) Class B-2 License—Nonresident Big Game License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of one hundred twenty-five dollars ($125) for the license year from May 1, 1967 to April 30, 1968 and thereafter for subsequent license years upon payment of the sum of one hundred fifty dollars ($150) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, and kill game animals in the area or areas designated in the license, as determined by the commission, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section

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26-202.3, upon payment of the sum of five dollars ($5) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days inclusive of the dates indicated on the license.

(9) Class B-5 License—Nonresident Deer License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-5 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) deer in the area or areas designated in the license, as determined by the commission, and to possess the carcass of same.

(10) Class B-6 License—Nonresident Antelope License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) antelope in the area designated in the license, as determined by the commission, and to possess the carcass of same.

(11) Special licenses. Any applicant who is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Mountain Goat, resident fifteen dollars ($15), nonresident thirty dollars ($30);

Mountain Sheep, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Bison or Buffalo, resident twenty-five dollars ($25), nonresident one hundred dollars ($100);

Antelope, resident three dollars ($3), nonresident ten dollars ($10);

Grizzly Bear, resident five dollars ($5), nonresident grizzly, black or brown bear, thirty-five dollars ($35).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars ($25) within ten (10) days after date of

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kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid applications for special licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.

(12) Class C License—Trapper's License. Any resident as defined in section 26-202.3, upon making application and paying the sum of ten dollars ($10) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap fur-bearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(13) Class C-1 License—Landowner's Trapping License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1) shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(14) Exception. (a) A resident under the definition of section 26-202.3, who is sixty-five (65) years or older shall be entitled to fish and hunt game birds with a pioneer license issued by the state fish and game commission for a fee of fifteen cents ($.15). The form of such license shall be prescribed by the fish and game commission.

(b) Residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) A veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, may fish with a license issued by the head of the hospital on forms prescribed and furnished by the commission. The fee for such license shall be fifteen cents ($.15).

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(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(e) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, A-4, and A-5 licenses for one-half (½) of the fees prescribed in this section.

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6 licenses to be issued in each of the hunting districts designated by it.

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(15) Only one (1) license of any one (1) class, except Class B-3 and B-4 licenses, shall be issued to any one (1) person, provided, however, that the commission may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen or destroyed upon payment of the sum of one dollar ($1).

(16) Class AAA License—Sportman's License. Any resident, as defined by section 26-202.3, who is twelve (12) years of age or older, upon payment of the sum of twenty dollars ($20) shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5 and A-6 licenses. The commission shall furnish each holder of a sportman's license an appropriate decal.

(17) Class D-1 License—Nonresident Mountain Lion License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

(18) Class D-2 License—Resident Mountain Lion License. Any person who is a resident as defined in section 26-202.3, and who is twelve (12) years of age or older, upon payment of the sum of five

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dollars ($5) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-2 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission."

Approved: March 5, 1973.

CHAPTER NO. 140

An Act Amending Section 94-9838, R.C.M. 1947, to Require a Hearing on a Parole Violation.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 94-9838, R.C.M. 1947, is amended to read as follows:

"94-9838. **Return of parole violator.** At any time during release on parole or conditional release the board may issue a warrant for the arrest of the released prisoner for violations of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return such prisoner to the actual custody of the penal institution from which he was released, or to any other suitable detention facility designated by the board. Any probation and parole officer may arrest such prisoner without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention, shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the prisoner *may, if circumstances warrant, be* incarcerated in such institution.

After the arrest of said prisoner, a hearing shall be held within a reasonable time, unless such hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer

who need not be a judicial officer, must preside over this hearing. This hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of this hearing and must be allowed to appear and speak in his own behalf and introduce relevant information to the hearings officer.

The hearings officer shall make a summary of what transpires at the hearing in terms of the responses of the parolee and the substance of the documents or evidence given in support of parole revocation and of the parolee's position. Based on the information given to him, the hearings officer must determine whether there is probable cause to hold the parolee for the final decision of the board of pardons as specified in section 94-9835.

If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release *and this report shall be accompanied by the findings of the hearings officer.* Thereupon, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged, under such rules and regulations as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release, or enter such other order as it may see fit.

A prisoner for whose return a warrant has been issued by the board shall, after the issuance of such warrant, if it is found that the warrant cannot be served, be deemed a fugitive or to have fled from justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served under the sentence, shall be determined by the board."

Approved: March 5, 1973.

CHAPTER NO. 141

An Act to Amend Sections 32-21-155.1 and 75-7002, R.C.M. 1947, to Require the Semiannual Inspection of School Buses in Compliance with Standard No. 17 of the Highway Safety Program Issued by the United States Department of Transportation.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 32-21-155.1, R.C.M. 1947, is amended to read as follows:

"32-21-155.1. *Semiannual* **inspection of school buses.** (1) The Montana highway patrol shall perform the *semiannual* inspection of school buses *one of which shall be* at least thirty (30) days prior to the beginning of the school term and reinspect the buses, if necessary, before the beginning of the school term.

(2) The Montana highway patrol's inspection shall determine if the school buses meet the minimum standards for school buses as adopted by the board of *public* education."

Section 2. Section 75-7002, R.C.M. 1947, is amended to read as follows:

"75-7002. **School bus definition and identification requirements.** A "school bus" shall mean any motor vehicle which is owned by a district or other public agency or by a carrier under contract with such a district or public agency, and which complies with the bus standards established by the board of *public* education as determined by the Montana highway patrol's *semiannual* inspection of school buses and the superintendent of public instruction. Such bus may be operated by the district or other public agency for the conveyance of pupils or may be privately operated by a carrier to provide such conveyance of pupils under contract with a district or other public agency. Every school bus shall bear on the front and rear of the bus a plainly visible sign containing the words "school bus" in letters at least eight (8) inches in height. When a school bus is operated on a highway for purposes other than transporting pupils to and from school or for school functions, all markings identifying it as a school bus shall be concealed."

Approved: March 5, 1973.

CHAPTER NO. 142

An Act Amending Section 32-1213, R.C.M. 1947, Relating to the Confidentiality of Automobile Accident Reports Filed Pursuant to the Uniform Accident Reporting Act By Providing That Such Reports May Be Examined By Certain Persons.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 32-1213, R.C.M. 1947, is amended to read as follows:

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"32-1213. **Accident reports confidential.** (a) All required accident reports and supplemental reports shall be without prejudice to the individual so reporting and shall be for the confidential use of the board or other state agencies having use for the records for accidental prevention purposes, or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles, except that the board may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident.

(b) All accident reports and supplemental information filed *as required by this act* shall be confidential and not open to general public inspection, nor shall copying of lists of such reports be permitted, except, however, that *the report* and supplemental information *filed by law enforcement personnel, as required by this act* may be examined by any person named *in such report or reports or by any driver, passenger or pedestrian involved in the accident* or by his representative designated in writing, *or if such person shall be deceased, by his executor or administrator or by the attorney representing such executor or administrator.*

(c) No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the board shall furnish upon demand of any person who has, or claims to have, made such a report or upon the demand of any court, a certificate showing that a specified accident report has or has not been made to the board solely to prove a compliance or a failure to comply with the requirement that such a report be made to the board."

Approved: March 5, 1973.

CHAPTER NO. 143

An Act to Approve and Legalize and Adopt as Prima Facie the Laws of Montana the Second Replacement of Part 2 of Volume Number 4 of the Revised Codes of Montana, 1947, as Published by the Publishers and Distributors of Said Codes; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The second replacement of part 2 of volume number 4 of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said Revised Codes of Montana, 1947, are hereby, as to both form and substance, approved, legalized

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and adopted as prima facie the laws of Montana now in force and effect with respect to the title and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana, 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana, 1947, as included in the original compilation of the Revised Codes of Montana, 1947.

Section 2. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity or enforcement of any act, enactment, or title thereof, statute, or code section omitted from or erroneously or incorrectly set forth in said replacement volumes.

Section 3. This act is effective on its passage and approval.

Approved: March 5, 1973.

CHAPTER NO. 144

An Act to Amend Sections 94-1430 and 94-1431, R.C.M. 1947, to Extend the Period of Time For Reporting Campaign Expenses to Twenty (20) Days.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 94-1430, R.C.M. 1947, is amended to read as follows:

"94-1430. **Statement by candidate as to moneys expended—filing after election—penalty.** Every candidate for nomination or election to public office, including candidates for the office of senator of the United States, shall, within *twenty (20)* days after the election at which he was a candidate, file with the secretary of state if a candidate for senator of the United States, representative in Congress, or for any state or district office in a district composed of one or more counties, or for members of the legislative assembly from a district composed of more than one county, but with the county clerk for legislative districts composed of not more than one county, and for county and precinct offices, and with the city clerk, auditor, or recorder of the town or city in which he resides, if he was a candidate for a town, city, or ward office, an intemized sworn statement setting forth in detail all the moneys contributed, expended, or promised by him to aid and promote his

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nomination or election, or both, as the case may be, and for the election of his party candidates, and all existing unfulfilled promises of every character, and all liabilities remaining uncanceled and in force at the time such statement is made, whether such expenditures, promises, and liabilities were made or incurred before, during, or after such election. If no money or other valuable thing was given, paid, expended, contributed, or promised, and no unfulfilled liabilities were incurred by a candidate for public office to aid or promote his nomination or election, or the election of his party candidates, he shall file a statement to that effect within *twenty (20)* days after the election at which he was a candidate. Any candidate who shall fail to file such a statement shall be fined twenty-five dollars for every day on which he was in default, unless he shall be excused by the court. *Twenty (20)* days after any such election the secretary of state, or county clerk, city clerk, auditor, or recorder, as the case may be, shall notify the county attorney of any failure to file such a statement on the part of any candidate, and within ten days thereafter such prosecuting officer shall proceed to prosecute said candidate for such offense."

Section 2. Section 94-1431, R.C.M. 1947, is amended to read as follows:

"94-1431. **Accounts of expenditures by political committees and other persons—statement.** (1) Every political committee shall have a treasurer, who is a voter, and shall cause him to keep detailed accounts of all its receipts, payments, and liabilities. Similar accounts shall be kept by every person, who in the aggregate receives or expends money or incurs liabilities to the amount of more than fifty dollars ($50) for political purposes, and by every political agent and candidate. Such accounts shall cover all transactions in any way affecting or connected with the political canvass, campaign, nomination, or election concerned.

(2) Every person receiving or expending money or incurring liability by authority or in behalf of or to promote the success or defeat of such committee, agent, candidate, or other person or political party or organization, shall, on demand, and in any event within *twenty (20)* days after such receipt, expenditure, or incurrence of liability, give such treasurer, agent, candidate, or other person on whose behalf such expense or liability was incurred a detailed verified account thereof. Every payment shall be accounted for by a receipted bill stating the particulars of expense. Every voucher, receipt, and verified account hereby required shall be a part of the accounts and files of such treasurer, agent, candidate, or other person, and shall be preserved for six (6) months after the election to which it refers.

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(3) Any person not a candidate for any office or nomination who expends money or value to an amount greater than fifty dollars ($50) in any campaign for nomination or election, to aid in the election or defeat of any candidate or candidates, or party ticket, or measure before the people, shall, within *twenty (20)* days after the election in which said money or value was expended, file with the secretary of state in the case of a measure voted upon by the people, or of state or district offices for districts composed of one (1) or more counties, or with the county clerk for county offices, and with the city clerk, auditor, or recorder for municipal offices, a verified itemized statement of such receipts and expenditures for every sum paid in excess of five dollars ($5), and shall at the same time deliver to the candidate or treasurer of the political organization whose success or defeat he has sought to promote, a duplicate of such statement and a copy of such receipts.

(4) The books of account of every treasurer of any political party, committee, or organization, during an election campaign, shall be open at all reasonable office hours to the inspection of the treasurer and chairman of any opposing political party or organization for the same electoral district; and his right of inspection may be enforced by writ of mandamus by any court of competent jurisdiction."

Approved: March 5, 1973.

CHAPTER NO. 145

An Act Validating, Ratifying, Approving and Confirming Bonds and Other Instruments or Obligations, Heretofore Issued by Public Bodies of this State, and all Proceedings Heretofore Taken by Such Public Bodies, to Authorize and Issue Such Bonds, Instruments and other Obligations, However Described; Providing that this Act May Be Cited as "The 1973 Bond Validating Act"; Containing a Repealing Clause; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act may be cited as "The 1973 Bond Validating Act."

Section 2. The following terms, wherever used or referred to in this act, shall have the following meanings:

(1) The term "public body" includes a county, city, town, school district, irrigation district, drainage district, special improve-

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ment district or any other political or governmental subdivision of the state of Montana, and shall also include the state board of education, the state board of examiners, the state water conservation board, the state highway commission or any other governmental agency of this state.

(2) The term "bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

Section 3. All bonds heretofore issued by any public body of this state, and all proceedings heretofore taken for the authorization and issuance of such bonds, for the levy, establishment, pledge and appropriation of taxes, special assessments and other charges and revenues to pay such bonds, and for the sale, exchange, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery, and bonds of such public bodies, whether heretofore issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such political body.

Section 4. This act shall not apply to or affect any action or appeal instituted on or before January 1, 1973, in which the validity of any such proceedings or of any such bonds is at issue.

Section 5. All acts and parts of acts in conflict herewith are repealed.

Section 6. This act is effective on its passage and approval.

Approved: March 5, 1973.

CHAPTER NO. 146

An Act to Validate Records of Court Proceedings Prior to January 1, 1973, Containing Defects, Omissions, Informalities or Irreg-

ularities in Obtaining a Judgment or Decree Affecting Real Property, in Which Time for Appeal Has Expired; Providing That Duly Certified Copies of Such Judgment or Decree May Be Read in Evidence with the Same Effect as Judgments or Decrees Duly and Regularly Obtained, Recorded and Entered.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1973, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

Approved: March 5, 1973.

CHAPTER NO. 147

An Act Validating Certain Instruments Affecting Real Property and which were Erroneously Executed or Acknowledged Prior to January 1, 1973; Imparting Notice by Recording Thereof; and Providing that Duly Certified Copies Thereof May Be Read In Evidence with like Effect as Copies of an Instrument Duly Acknowledged and Recorded.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Any instrument affecting real property, provided no action is now pending to set such instrument aside which was, previous to January 1, 1973, copied into the proper book kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission

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or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore asknowledged by the vice president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

Approved: March 5, 1973.

CHAPTER NO. 148

An Act to Validate and Confirm Sales or Dispositions Heretofore Made or Attempted to be Made by any County of any Property in Which Such County Had or Claimed any Right, Title or Interest, and all Instruments of Transfer or Conveyance Heretofore Made or Executed by any County, and to Declare that all Such Sales, Dispositions and Instruments have Vested in the Grantee or Purchaser, as of the Date Thereof, all Right, Title and Interest of the County in and to the Property Described or Covered.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

Approved: March 5, 1973.

CHAPTER NO. 149

An Act to Amend Section 75-6808, R.C.M. 1947, to Allow All Classes

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of School Districts to Contract Without Letting Bids For Less Than Four Thousand Dollars ($4,000).

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-6808, R.C.M. 1947, is amended to read as follows:

"75-6808. **Pecuniary interests, letting contracts and calling for bids, under certain circumstances.** It shall be unlawful for any trustee to (1) have any pecuniary interest, either directly or indirectly, in the erection of any school building, or for warming, ventilating, furnishing, or repairing the same, or (2) be in any manner connected with the furnishing of supplies for the maintenance and operation of the schools, or (3) be employed in any capacity by the school district of which he is trustee.

Whenever the estimated cost of any building, furnishing, repairing or other work for the benefit of the district, or purchasing of supplies for the district, exceeds the sum of four thousand dollars ($4,000.00), the work done, or the purchase made shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before consideration of bids. Any contract not let pursuant to this section shall be void.

In all cases where bidding is required, the trustees shall award the contract to the lowest responsible bidder except that the trustees shall have the right to reject any or all bids.

With regard to contracting for work or supplies, the board of trustees of a community college district shall be subject to the provisions of section 75-8118."

Section 2. Whenever any law of this state provides a limitation upon the amount of money that a school district can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a school district shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders or by any similar device. This section shall apply not only where the public work or construction project is divided into several projects

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which are constructed at approximately the same period of time, but also where the public work or construction project is divided into several projects which are constructed in different time periods or over an extended period of time.

Approved: March 6, 1973.

CHAPTER NO. 150

An Act to Amend the Unit Ownership Act to Provide that Lessees of a Condominium Unit may be Treated as Owners and to Provide for Sale of Units Before Construction to be Under the Control of the Department of Business Regulation; Amending Sections 67-2302 through 67-2305, 67-2314, 67-2319, 67-2322 and 67-2323, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 67-2302, R.C.M. 1947, is amended to read as follows:

"67-2302. **Definition of terms.** As used in sections 67-2302 to 67-2342, unless the context requires otherwise:

(1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Building" means a multiple-unit building or buildings comprising a part of the property.

(3) "Common elements" means the general common elements and the limited common elements.

(4) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the common elements;

(b) Expenses agreed upon as common by all the unit owners; and

(c) Expenses declared common by sections 67-2329 and 67-2331, or by the declaration or the bylaws of the particular condominium.

(5) "Condominium" means the ownership of single units with common elements located on property submitted to the provisions of sections 67-2301 to 67-2342.

(6) "Declaration" means the instrument by which the property is submitted to the provisions of sections 67-2302 to 67-2342.

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(7) "Department" means the department of business regulation.

(8) "General common elements," unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) The land on which the building is located except any portion thereof included in a unit or made a limited common element by the declaration;

(b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances and exits of the building;

(c) The basements, yards, gardens, parking areas and outside storage spaces, *private pathways, sidewalks and private roads;*

(d) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal and incinerating;

(e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all aparatus and installations existing for common use;

(f) The premises for the lodging of janitors or caretakers of the property; and

(g) All other elements of the building necessary or convenient to its existence, maintenance and safety, or normally in common use.

(9) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

(10) "Majority" or "Majority of unit owners," unless otherwise provided in the declaration, means the owners of more than fifty per cent (50%) in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in such element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means such percentage in the aggregate of such undivided ownership.

(11) "Manager" means the manager, board of managers or other person in charge of the administration of or managing, the property.

(12) "Project" means a real estate condominium project; a plan whereby a condominium of two (2) or more units, located on

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property submitted to the provisions of 67-2302-67-2342, are offered or proposed to be offered for sale.

(13) "Property" means the land, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are submitted to the provisions of sections 67-2302 to 67-2342.

(14) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

(15) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts thereof, intended for any type of independent use, and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(16) "Unit designation" means the number, letter or combination thereof designating a unit in the declaration.

(17) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. *However, for all purposes, including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit shall be considered a unit owner."*

Section 2. Section 67-2303, R.C.M. 1947, is amended to read as follows:

"67-2303. **Application of act—recording of declaration.** In order to submit any property to the provisions of sections 67-2302 to 67-2342, the *sole* owner *or sole lessee or all of the owners or all of the lessees* thereof shall *execute, acknowledge, and* record a declaration in the office of the recording officer of the county in which *the* property is located. The declaration shall be executed in accordance with section 67-2314."

Section 3. There is a new section to be numbered 67-2303.1, which reads as follows:

67-2303.1. (1) If units are conveyed or leased prior to the completion of construction of the building, within which such unit is located, and all of the general common elements of the project (except those general common elements forming a part of a separate building enclosing other units) as set forth in declaration filed pursuant to section 67-2314, all moneys from the sale of the units including any payments made on loan commitments from lending institutions, shall be deposited in escrow by the developer in a fund

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with a bank, savings and loan association, or company authorized to do business in the state under an escrow arrangement.

(2) No disbursements may be made from such fund until the completion of the building and general common elements or until compliance with the provisions of sections 67-2303.2 through 67-2303.6, whichever comes first.

(3) If no disbursements are made until after the building and general common elements have been completed, the developer need not comply with sections 67-2302.2 through 67-2303.6.

(4) If sections 67-2303.2 through 67-2303.6 have been complied with, disbursements from such fund may be made, from time to time, to pay for construction costs of the building in proportion to the valuation of the work completed by the contractor as certified by a registered architect or registered professional engineer, and for architectural, engineering, finance, and legal fees and for other incidental expenses of the condominium project as approved by the mortgagee. The balance of the moneys remaining in the fund shall be disbursed only upon completion of the building, free and clear of all mechanic's and materialman's liens. The department may impose other restrictions relative to the retention and disbursement of the fund.

Section 4. There is a new section to be numbered 67-2303.2, which reads as follows:

67-2303.2. (1) The developer of a project shall notify the department in writing prior to the time the project or units thereof are to be offered for sale.

(2) The notice of intention to sell shall fully disclose all material facts on a form prescribed by the department.

(3) The fee for filing the notice of intention is fifty dollars ($50). For the inspection of the project and examination of the accounts and records of the developer, the department may require the developer to pay the costs thereof, not to exceed the sum of one hundred dollars ($100) for each day actually required to perform such duties, but in no event shall the total charges exceed the sum of five hundred dollars ($500).

Section 5. There is a new section to be numbered 67-2303.3, which reads as follows:

67-2303.3. (1) After receipt of the notice of intention to sell, the department shall inspect the project and examine the accounts and records of the developer.

(2) The department shall make a report of its inspection which

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shall contain all material facts reasonably available and which shall be on file and available for public inspection in the office of the director.

(3) The department may issue a preliminary report if the notice of intention is incomplete in some respect but the department is satisfied that the report will adequately disclose all material facts which a prospective purchaser should consider and that adequate protection for purchaser's funds has been provided.

(4) A developer may not use a preliminary report to contract for the sale of a unit unless he files the notice of intention to sell, a specimen copy of the proposed contract of sale, and an executed copy of an escrow agreement with a depository in accordance with section 67-2303.1.

Section 6. There is a new section to be numbered 67-2303.4, which reads as follows:

67-2303.4. (1) Purchasers funds obtained prior to issuance of final reports shall be refunded if there is any change in the condominium building plans subsequent to execution of the contract requiring approval of a city or county officer having jurisdiction over issuance of permits for construction of buildings, unless purchaser's written acceptance of the specific change is obtained.

(2) Rights under contracts of sale of condominium units under a preliminary report are not enforceable against purchasers until purchasers have had a full opportunity to read the department's final report on the project, and to obtain a refund of any moneys paid as well as a release from all obligations if the final report differs in any material respect from the preliminary report.

(3) If the final report is not issued within one (1) year from the date of issuance of the preliminary report, purchasers are entitled to refund of all moneys paid by the purchasers thereunder without further obligation.

Section 7. There is a new section to be numbered 67-2303.5, which reads as follows:

67-2303.5. (1) The department may not issue a final report prior to completion of construction of a project unless:

(a) There is filed with the department:

(i) a verified statement showing all costs involved in completing the project, including land, ground lease payments and equipment lease payments, real property taxes, construction costs, architect, engineering, and attorneys fees, financing costs, provisions for contingency, and other costs which must be paid on or be-

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fore the completion of construction of the building;

(ii) a verified estimate of the time of completion of construction of the total project;

(iii) satisfactory evidence of sufficient funds to cover the total project cost from purchasers funds, equity funds, interim or permanent loan commitments, or other sources;

(iv) a copy of the executed construction contract;

(v) satisfactory evidence of a performance bond of not less than one hundred per cent (100%) of the cost of construction with a reliable surety company;

(vi) if purchasers funds are to be used for construction, an executed copy of the escrow agreement for the escrow fund required under section 67-2303.1 for financing construction, which shall expressly provide for:

(A) no disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for such disbursements which have been approved or certified for payment by the mortgagee or a financially disinterested person; and

(B) no disbursements from the balance of the escrow fund after payment of construction costs pursuant to the preceding paragraph until the escrow agent receives satisfactory evidence that all mechanics' and materialmen's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute.

(b) The declaration provided for in section 67-2314 has been filed.

(2) If after a final report has been issued, any circumstance occurs which would render the final report misleading as to purchasers, or if the developer proposes to materially change the project, the developer shall stop all sales and immediately submit sufficient information to the department to enable it to issue a supplementary report describing the changes. Sales shall not resume until the supplementary report has been issued.

Section 8. There is a new section to be numbered 67-2203.6, which reads as follows:

67-2303.6. (1) The developer, or any other person offering any unit in a condominium project prior to completion of its construction, shall not enter into a binding contract or agreement for the sale or resale thereof until:

(a) a true copy of the department's final report thereon with

all supplementary reports has been given to the prospective purchaser;

(b) the prospective purchaser has been given an opportunity to read the report; and

(c) the prospective purchaser executes a receipt for the reports.

(2) Receipts taken for any report shall be kept on file in possession of the developer subject to inspection at a reasonable time by the department for a period of three (3) years from the date the receipt was taken.

Section 9. Section 67-2304, R.C.M. 1947, is amended to read as follows:

"67-2304. **Status of the unit.** While the property is submitted to sections 67-2302 to 67-2342, a unit in the building may be individually conveyed, *leased or* encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other units in the building of which they form a part, and the corresponding individual titles and interests shall be recordable."

Section 10. Section 67-2305, R.C.M. 1947, is amended to read as follows:

"67-2305. **Ownership of unit.** Each unit owner shall be entitled to the exclusive ownership and possession of his unit. *A unit may be jointly or commonly owned by more than one (1) person.*"

Section 11. Section 67-2314, R.C.M. 1947, is amended to read as follows:

"67-2314. **Contents of declaration.** A declaration shall contain:

(1) A description of the land, *whether leased or in fee simple, on which the building is or is to be located.*

(2) The name by which the property shall be known and a general description of the building, including the number of stories and basements, the number of units and the principal materials of which it is constructed.

(3) The unit designation, location, approximate area of each unit and any other data necessary for proper identification.

(4) A description of the general common elements and the percentage of the interest of each unit owner therein.

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(5) A description of the limited common elements, if any, stating to which units their use is reserved and in what percentage.

(6) A statement of the use for which the building and each of the units is intended.

(7) The name of a person to receive service of process in the cases provided in section 67-2338, and the residence or place of business of such person which shall be within the county in which the property is located.

(8) Any other details regarding the property that the person executing the declaration considers desirable."

Section 12. Section 67-2319, R.C.M. 1947, is amended to read as follows:

"67-2319. **Floor plans recorded with declaration.** Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit including the unit designation, location and dimensions of each unit and the common areas to which each has access. There shall be attached to the floor plans a statement of the registered architect or registered professional engineer who prepared the floor plans, certifying that the plans *are an accurate copy of the plans filed with and approved by the city and county officers having jurisdiction to issue building permits. If the plans do not include a verified statement by the architect or engineer that the plans fully and accurately depict the layout, location, unit designation and dimensions of each unit as built, there shall be recorded within thirty (30) days from the date of completion of the building, or from the date of the first occupancy of the building, whichever first occurs, an amendment to the declaration to which shall be attached a verified statement of a registered architect or registered professional engineer certifying that the floor plans previously filed, or being filed simultaneously with the amendment,* fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed."

Section 13. Section 67-2322, R.C.M. 1947, is amended to read as follows:

"67-2322. **Contents of deed** *or leases* **of unit.** The deed *or lease* of a unit shall contain:

(1) A description of the land, the name of the property, and the recording index numbers and date of recording of the declaration.

(2) The unit designation of the unit.

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(3) The use for which the unit is intended.

(4) The percentage of undivided interest in the common elements appertaining to the unit.

(5) Any further details the grantor and grantee *or lessor and lessee* may consider desirable."

Section 14. Section 67-2323, R.C.M. 1947, is amended to read as follows:

"67-2323. **Blanket mortgages and other blanket liens affecting unit at time of first conveyance.** At the time of the first conveyance *or lease* of each unit following the recording of the declaration, every mortgage and other lien affecting such unit including the undivided interest of the unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed *or leased* and its interest in the common elements shall be released therefrom by partial release duly recorded."

Section 15. If the department has satisfactory evidence to indicate that any person has violated any provision of section 67-2301 to 67-2342, it may conduct an investigation and bring an action for injunction.

Section 16. Any person who violates any provision of sections 67-2301 to 67-2342 or any rule of the department under such sections is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars ($1,000) or by imprisonment for not more than one (1) year, or both.

Approved: March 6, 1973.

CHAPTER NO. 151

An Act Providing for Inclusion of the State Fund Within the Definition of "Insurer" in the Workmen's Compensation Act, Title 92, R.C.M. 1947; and Amending Section 92-435, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 92-435, R.C.M. 1947, is amended to read as follows:

"92-435. **Insurer defined.** "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act *and includes industrial insurance account created by this act, known as the "state fund."* "

Approved: March 6, 1973.

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CHAPTER NO. 152

An Act to Provide a Definition of Residency to Determine County or State Responsibility for Financial Support of General Relief Recipients; and to Repeal Section 71-302, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **Eligibility requirements for general relief.** (1) There are no residency requirements for an applicant to be eligible for general relief in Montana.

(2) Any person otherwise qualified who has not maintained legal residence in a single county for one (1) year or more shall file his application in the county in which he is residing, and his assistance shall be paid entirely from state funds until he has resided for one (1) year in said county. If a recipient moves from one county to another county, he shall for the purpose of this act be deemed to retain residence in the original county until he has resided in the second county for a period of one (1) year at which time he will be deemed to have gained residence in the second county.

(3) If a person is absent from the state voluntarily, he shall thereby be ineligible for general relief in the state of Montana.

(4) Time spent as a patient in a licensed nursing home or hospital, or a private charitable institution, shall not in any case be considered in determining the matter of county residence.

Section 2. Section 71-302, R.C.M. 1947, is repealed.

Approved: March 6, 1973.

CHAPTER NO. 153

An Act to Amend Section 89-1208, R.C.M. 1947, to Raise the Compensation of Irrigation District Commissioners From Ten Dollars ($10) to Twenty Dollars ($20) and to Provide a Mileage Allowance of Twelve Cents ($.12) Per Mile.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-1208, R.C.M. 1947, is amended to read as follows:

"89-1208. **Compensation of commissioners—penalty for interest in contract—bonds of commissioners.** The commissioners, when sitting as a board or when engaged in the business of the district, shall each receive not to exceed *twenty dollars ($20),* per day for

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services, and, in addition thereto, their necessary expenses in attending meetings, or when otherwise engaged on district business, including premiums on qualifying bonds and any other bonds required of them in connection with their office, provided such expenses and per diem be approved by a unanimous vote of said board *and a mileage allowance of twelve cents ($.12) per mile in attending board meetings or when engaged in the business of the irrigation district.*

No commissioner or any other officer named in this act shall in any manner be interested directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor and his conviction thereof shall work forfeiture of his office and he shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment in the county jail not exceeding six (6) months or by both such fine and imprisonment.

The commissioners of said irrigation district shall each furnish a bond in the penal sum of twenty-five hundred dollars ($2500.00), with corporate surety conditioned for the faithful performance of their duties under this act, and the secretary shall furnish bond, with corporate surety, in the sum of one thousand dollars ($1000.00), conditioned for the faithful performance of his duties pursuant to this act, and for the proper and safekeeping of the records and documents of said district, in all cases where the obligations of said district, either existing or proposed, total two hundred and fifty thousand dollars ($250,000.00) or over. In all other cases the bond for said commissioners shall be in the sum of one thousand dollars ($1000.00)."

Approved: March 6, 1973.

CHAPTER NO. 154

An Act Providing for a Definition of "Employer" and Providing Comprehensive Coverage Extending to Subcontractors in the Workmen's Compensation Act, Title 92, R.C.M. 1947; and Repealing Section 92-410, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-410.1, R.C.M. 1947, which reads as follows:

92-410.1. **Employer defined.** "Employer" means the state and

each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof.

Any employer who contracts to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation or profession of such employer shall be liable for the payment of compensation to the employees of any subcontractor unless the subcontractor primarily liable for the payment of such compensation has coverage under this act. Any employers who shall become liable for such compensation may recover the amount of benefits paid and necessary expenses from the subcontractor primarily liable therein.

Section 2. Section 92-410, R.C.M. 1947, is repealed.

Approved: March 6, 1973.

CHAPTER NO. 155

An Act Providing For Compensation For Injuries Producing Partial Disability Under the Workmen's Compensation Act; Repealing Section 92-703, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is to be a new section to be numbered 92-703.1, R.C.M. 1947, which reads as follows:

92-703.1. **Compensation for injuries causing partial disability.** Weekly compensation benefits for injury producing partial disability shall be sixty-six and two-thirds percent (66⅔%) of the difference between the wages received at the time of the injury and the wages that the injured employee is capable of earning thereafter, subject to a maximum compensation of sixty dollars ($60) a week.

The compensation shall be paid during the period of disability, not exceeding however, five hundred (500) weeks in cases of partial disability; provided, however, that compensation for partial disability resulting from the loss of or injury to any member shall

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not be payable for a greater number of weeks than is specified in section 92-709 for the loss of the member.

Section 2. Section 92-703, R.C.M. 1947, is repealed.

Approved: March 6, 1973.

CHAPTER NO. 156

An Act Amending Section 11-3831, R.C.M. 1947, to Require That a Master Plan Include a Study of Available Types of New Housing.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-3831, R.C.M. 1947, is amended to read as follows:

"11-3831. **Master plan—contents.** The planning board shall prepare and propose a master plan for the jurisdictional area, which plan may include;

1. Careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county.

2. Maps, plats, charts, and descriptive material presenting basic information, locations, extent and character of any of the following:

a. History, population, and physical site conditions;

b. Land use, including the height, area, bulk, location and use of private and public structures and premises;

c. Population densities;

d. Community centers and neighborhood units;

e. Blighted and slum areas;

f. Streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;

g. Sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;

h. Flood control and prevention;

i. Public and private utilities, including water, light, heat, communication, and other services;

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j. Transportation, including rail, bus, truck, air, and water transport, and their terminal facilities;

k. Local mass transit, including motor and trolley bus, street, elevated or underground railways, and taxicabs;

l. Parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public grounds, spaces, and facilities of a recreational nature;

m. Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;

n. Education, including location and extent of schools, colleges, and universities;

o. Land utilization, including areas for manufacturing, and industrial uses, concentration of wholesale, retail business, and other commercial uses, residential, and areas for mixed uses;

p. Conservation of water, soil, agricultural, and mineral resources;

q. Any other factors which are a part of the physical, economic, or social situation within the city or county.

3. Reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in part 2 of this section so as to substantially accomplish the object of this legislation as set out in section 11-3801.

4. A long-range development program of public works' projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment, and the keeping of such program up-to-date, for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds.

5. Recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes."

Approved: March 6, 1973.

CHAPTER NO. 157

An Act to Provide Procedures for the Amendatory Veto in Accord-

ance with Article VI, Section 10(2) of the 1972 Montana Constitution; Amending Section 43-502, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 43-502, R.C.M. 1947, is amended to read as follows:

"43-502. **Approval of bills,** *line item and amendatory vetoes. (1)* When the governor approves a bill he must set his name thereto, with the date of his approval, and deposit the same in the office of the secretary of state.

(2) If any bill presented to the governor contains several distinct items of appropriation of money, he may disapprove one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and his objections thereto. *The* governor must transmit to the house in which the bill originated *(or to the secretary of state if the legislature is not in session)* a copy of such statement, and the items so objected to must be separately reconsidered in the same manner as bills which have been disapproved by the governor.

(3) The governor may return any bill to the originating house with his recommendations for amendment. Such house shall reconsider the bill under its rules relating to amendment offered in committee of the whole. The bill is then subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in committee of the whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(b) If both houses approve the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(c) If both houses disapprove the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(d) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses the governor's recommendations

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shall be considered not approved and the bill shall be returned to the governor for further consideration.

(e) The governor may not return the bill for amendment a second time.

Approved: March 6, 1973.

CHAPTER NO. 158

An Act to Amend Section 69-5104, R.C.M. 1947, to Require That A Written Report of All Autopsies of a Human Body Be Sent to the Physician Attending the Person at Time of Death and to the Hospital and Skilled Nursing Facility Where the Person Died in Addition to Other Recipients as Presently Provided By Law.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 69-5104, R.C.M. 1947, is amended to read as follows:

"69-5104. **Qualifications to perform autopsies—written report of findings.** All autopsies of a human body shall be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of his findings, including the cause of death *if determined, to the physician attending the person at the time of death if other than the physician performing the autopsy, upon the request of any such hospital or skilled nursing facility, to the hospital or skilled nursing facility where the person died or where he was confined during his last illness to be retained as part of the permanent record of the hospital, or skilled nursing facility,* to the next of kin of the decedent *or the* representative of the decedent's estate *upon request, and to such* other person lawfully requesting the report."

Approved: March 6, 1973.

CHAPTER NO. 159

An Act to Amend Section 87-148, R.C.M. 1947, Providing For Additional Definitions of Base Period and Benefit Year; Amendments to Conform With Reorganization As Provided In Title 82A, Chapter 10, R.C.M. 1947; Amendments to Clarify Employer Coverage; and Deletion of Language No Longer Applicable.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 87-148, R.C.M. 1947, is amended to read as follows:

"87-148. **Definitions.** As used in this act, unless the context clearly requires otherwise:

(a) "Annual payroll" means the total amount of wages paid by an employer (regardless of the time of payment) for employment during a calendar year.

(b) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

(c) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year. *Provided, however, that, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.*

(d) "Benefit year" with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim, and thereafter the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year, provided that if such filing shall result in an overlapping of benefit years the new benefit year shall begin upon the first Sunday following the expiration of his last preceding benefit year. *Provided, however, that, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the benefit year shall be that applicable under the unemployment law of the paying state.*

(e) "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(f) *"Division"* means the employment security *division of the department of labor and industry, provided for in title 82A, chapter 10, R.C.M. 1947.*

(g) "Contributions" means the money payments to the state unemployment compensation fund required by this act.

(h) "Employing unit" means any individual or type of organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust,

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estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one (1) or more individuals performing services for it within this state; *and*

(1) All individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act.

(2) Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(i) "Employer" means:

(1) Any employing unit whose total annual payroll within either the current or preceding calendar year, exceeds the sum of five hundred dollars ($500);

(2) Any individual or employing unit which acquired the organization, trade or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this act), and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit would be an employer under paragraph (1) of this subsection;

(4) Any employing unit not an employer by reason of any other paragraph of this subsection for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund, or *an employing unit* which, as a condition for approval of this act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under this act.

(5) Any employing unit which, having become an employer under paragraph (1), (2), or (3), or (4), has not, under section 87-110, ceased to be an employer subject to this act; or

(6) For the effective period of its election pursuant to section 87-110 (c) and (d) any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" subject to other provisions of this subsection means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(A) The service is localized in this state; or

(B) The service is not localized in any state but some of the service is performed in this state and (I) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (II) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this state and the *division* approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4) Service shall be deemed to be localized within a state if—

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the *division* that:

(A) Such individual has been and will continue to be

free from control or direction over the performance of such services, both under his contract and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities) for a hospital or institution of higher education located in this state.

(7) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(A) For the purposes of paragraphs (6) and (7) of this subsection the term "employment" does not apply to service performed:

(1) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) In the employ of a school which is not an institution of higher education; or

(4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(5) Services performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or any agency

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of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(6) Services performed for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution.

(8) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subparagraphs (2) or *(4)* of this subsection or the parallel provisions of another state's law), if:

(A) The employer's principal place of business in the United States is located in this state; or

(B) The employer has no place of business in the United States, but

(1) The employer is an individual who is a resident of this state; or

(2) The employer is a corporation which is organized under the laws of this state; or

(3) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(C) None of the criteria of divisions (A) and (B) of this subparagraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(D) An "American employer," for purposes of this paragraph, means a person who is:

(1) An individual who is a resident of the United States; or

(2) A partnership if two-thirds (⅔) or more of the partners are residents of the United States; or

(3) A trust, if all of the trustees are residents of the United States; or

(4) A corporation organized under the laws of the United States or of any state.

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(9) The term "employment" shall not include:

(A) Agricultural labor; the term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, and remunerated services performed after December 31, 1971:

(1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity commonly known as agricultural commodities, or in connection with the hatching of poultry, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In the employ of the operator of a farm or a group of operators of farms (or a co-operative organization of which such operators are members) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator *or operators* produced more than one-half (½) of the commodity with respect to which such service is performed.

(5) The provisions of paragraphs (1), (2), (3), and (4) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

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(6) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(B) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother;

(E) Service performed in the employ of this state, except as provided in subsection (j) (6) of this section, or of any political subdivision thereof, *which has not elected coverage pursuant to section 87-110 (d);*

(F) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this section and shall be subject to this act the same as state banks;

(G) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the *division* is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner in section 87-121 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this act;

(H) Services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of eighteen (18) years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution.

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(I) Services performed by real estate, securities and insurance salesmen paid solely by commissions and without guarantee of minimum earnings.

(J) Service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university, or by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

(K) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(L) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital.

(k) "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, or such other free public employment offices operated and maintained by the United States government or its instrumentalities, as the *division* may approve.

(l) "Fund" means the unemployment compensation fund established by this act, to which all contributions *and payments in lieu of contributions are* required and from which all benefits provided under this act shall be paid.

(m) "State," includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(n) "Institution of higher education" for the purposes of this section, means an education institution which:

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(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this section.

(o) "Hospital" means an institution which has been licensed, certified or approved by the state of Montana as a hospital.

(p) "Board" means the board of labor appeals, provided for in title 82A, chapter 10, R.C.M. 1947."

Approved: March 6, 1973.

CHAPTER NO. 160

An Act Amending Section 11-1803, R.C.M. 1947, Increasing the Probationary Period Served by Newly Appointed Policemen from Six (6) Months to One (1) Year.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-1803, R.C.M. 1947, is amended to read as follows:

"11-1803. **Terms of members of police force.** All appointments to the police force must be appointed by the mayor or in those cities operating under the commission-manager plan, the manager thereof, and confirmed by the city council or commission, but no such appointment must be made, until an application for such position on the police force has been filed with the mayor or in those cities operating under the commission-manager plan, the manager thereof, and by him referred to the police commission, where such commission exists, and such applicant has successfully passed

the examination required to be held by such police commission, and a certificate from such police commission that the applicant has qualified for such appointment has been filed with the mayor or in those cities operating under the commission-manager plan, the manager thereof. Every applicant who has passed such examination and received such certificate must first serve for a probationary term of not more than *one (1) year*. At any time before the end of such probationary term, the mayor or in those cities operating under the commision-manager plan, the manager thereof, may revoke such appointment. After the end of such probationary period, and within thirty days thereafter, the appointment of such applicant must be submitted to the city council or commission, and if such appointment is confirmed by the city council or commission, such applicant becomes a member of the police force, and shall hold such position during good behavior, unless suspended or discharged as provided by law."

Approved: March 6, 1973.

CHAPTER NO. 161

An Act to Amend Section 11-3207, R.C.M. 1947, to Provide for a Method of Selection of Commissioners Under Commission-Manager Plan.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-3207, R.C.M. 1947, is amended to read as follows:

"11-3207. **Manner of conducting election—canvassing votes.** Such election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other municipal elections.

The provision of section 11-3215 are specifically to be followed in the special election except that the date of the primary election shall be at least thirty (30) days before the special election; provided further that the provisions of section 11-3218.1 shall be applicable to this section."

Approved: March 6, 1973.

CHAPTER NO. 162

An Act to Provide for the Exception of Mountain Lion from the Species of Game Animals as to Which the Removal of Trophy

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Parts or Wasting and Abandonment of Carcass Thereof is Prohibited; Amending Section 26-307, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 26-307, R.C.M. 1947, is amended to read as follows:

"26-307. **Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions.** (1) It shall be unlawful and a misdemeanor for any person responsible for the death of any game animal of this state, excepting grizzly, black and brown bear *and mountain lion,* to detach or remove from the carcass only the head, hide, antlers, tusks or teeth, or any or all of aforesaid parts, or to waste any part of any game animal, game bird, or game fish suitable for food, or to abandon the carcass of any game animal in the field. except black and brown bear *and mountain lion,* which need have removed and taken from the carcass only the head or the hide of such bear *or mountain lion,* and except grizzly bear, which need have removed and taken from the carcass only the head and hide and such other parts as the state fish and game commission may demand for scientific purposes. All parts of grizzly bear demanded by the commission for scientific purposes must be delivered to an officer or employee of the commission for inspection as soon as possible after removal and the commission shall return to the licensee any bone structure and skull within one year upon written request. The hide shall be returned immediately.

(2) It shall be unlawful and a misdemeanor for any person to kill more than one game animal of any one species, in any one license year, unless the killing of more than one game animal of such species has been authorized by regulations of the fish and game commission.

(3) It shall be unlawful and a misdemeanor for any person during the closed season on any species of game animal, game bird or fish to take, hunt, shoot, kill or capture any such game animal or such game bird or to fish for or catch any such fish."

Approved: March 6, 1973.

CHAPTER NO. 163

An Act to Amend Section 87-109, R.C.M. 1947, Providing for Clarification of the Definition of Nonprofit Organizations Eligible to Elect to Make Payments in Lieu of Contributions; Providing for Group Election by Nonprofit Organizations; Pro-

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viding for Termination of Election to Make Payments in Lieu of Contributions and Providing for Appeal Rights of Non-profit Organizations Making Payments in Lieu of Contributions; Providing Amendments to Conform with Reorganization as Required in Title 82A, Chapter 10, R.C.M. 1947; and Deletion of Language No Longer Applicable.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 87-109, R.C.M. 1947, is amended to read as follows:

"87-109. **Contributions.** (a) Payment. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages, as defined in section 87-149 (c), paid for employment (as defined in this act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the *division* for the fund in accordance with such regulations as the *division* may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half (½) cent or more, in which case it shall be increased to one (1) cent.

(b) Rate of contribution.

(1) Each employer shall pay contributions at the rate of three and one-tenth per centum (3.1%) of wages, as defined in section 87-149 (c) paid by him with respect to such employment, except as provided in subsection (c) of this section.

Nonprofit organizations defined in section *501 (c) (3) of the federal internal revenue code and which are exempt from tax under section 501 (a) of such code* may elect to make payments in lieu of contributions; the state and its political subdivisions specifically covered by this act and those electing coverage shall make payments in lieu of contributions.

A group of nonprofit organizations may elect with the approval of the division to act as a group in fulfilling the requirements of this subsection or of this act.

(2) Employers required or *eligible to elect* to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus one-half (½) of the amount of extended benefits paid to individuals based on wages paid by such employing unit. If benefits paid an individual are based on wages paid by both such employer and one (1) or more other employers, the amount payable by such employer to the fund

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shall bear the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all his base period employers. If the base period wages of an individual include wages from more than one (1) such employer, the amount to be paid into the fund with respect to the benefits paid to such individual shall be prorated among the liable employers in proportion to the wages paid to such individual by each such employer during the base period. The amount of payment required from such employers shall be ascertained by the *division* quarterly and shall become due and payable by such employer quarterly as directed in this act. Penalty and interest for delinquency shall be assessed such employers as specified in section 87-135.

(3) *Any* nonprofit organizations as defined in *subsection (b) (1) of this section* electing to become liable for payments in lieu of contributions must file with the *division* a written notice of its election not later than thirty (30) days immediately following the date of the determination of subjectivity to this act. This election shall be *for a period of not less than two (2) years.*

(A) Any nonprofit organization may terminate its election to make payments in lieu of contributions after two (2) calendar years from the effective date of such election by filing a written notice with the division not later than thirty (30) days prior to the beginning of the taxable year for which such termination is effective.

(B) Any nonprofit organization defined in subsection (b)(1) of this section which has been paying contributions for at least two (2) taxable years may change to payments in lieu of contributions by filing with the division a written notice to that effect within thirty (30) days before the beginning of the taxable year for which the change is effective.

(C) If the nonprofit organization is delinquent in making payments in lieu of contributions, the *division* may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

(4) Payments in lieu of contributions by the state and its political subdivisions shall be an amount equivalent to the amount of benefits paid to individuals based on wages paid by the state and its political subdivisions. The method of determining benefits attributable shall be the same as that set forth in subsection (b) (2) of this section. The amount of payments shall be paid in such manner as the *division* may prescribe.

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(c) Experience rating.

The *division* shall for each calendar year, classify employers in accordance with their actual contributions and unemployment experience and shall determine for each employer the rate of contributions which shall apply to him throughout the calendar year in order to reflect said experience and classification. The *division* shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

In making such classification, the *division* shall take account, each to an equal extent, of the following factors relating to the unemployment hazard shown by each employer on the basis of (1) average annual net percentage declines in total payrolls for the last three (3) years prior to computation date; (2) number of years the employer has paid contributions; and (3) chargebacks to the individual employer account upon the last employer basis. The computation date is hereby fixed as of the close of business on June 30 of the preceding calendar year.

The rates for the first calendar quarter of calendar year 1972 and thereafter, except as hereinafter provided, shall be so fixed that they would, if applied to all employers (except those employers making payments in lieu of contributions) and their total taxable annual payrolls for the preceding calendar year, have yielded total paid contributions equaling approximately one and five-tenths per centum (1.5%) of the total of all such payrolls.

The *division* shall determine the contribution rate applicable to each employer for any calendar year subject to the following limitations:

(1) Each employer's rate shall be three and one-tenth per centum (3.1%) unless and until there have been three (3) years prior to the computation date throughout which the employer has paid contributions at the maximum tax rate set by law for each of such years and has reported and paid contributions during each of the three (3) calendar years immediately preceding the computation date and with respect to such three (3) calendar years has filed all contribution reports prescribed by the *division* and paid all contributions due with respect to the three (3) calendar years before March 31 of the rate year. Upon payment of past-due contributions the *division* shall, for the current year, compute a rate for the next succeeding quarter following the payment.

(2) The classified contribution rates for the calendar year 1969, and thereafter, except as hereinafter provided, shall be: five-

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tenths of one per centum (.5%), seven-tenths of one per centum (.7%), nine-tenths of one per centum (.9%), one and one-tenth per centum (1.1%), one and three-tenths per centum (1.3%), one and five-tenths per centum (1.5%), one and seven-tenths per centum (1.7%), one and nine-tenths per centum (1.9%), two and one-tenth per centum (2.1%), two and three-tenths per centum (2.3%), two and five-tenths per centum (2.5%), two and seven-tenths per centum (2.7%), two and nine-tenths per centum (2.9%) and three and one-tenth per centum (3.1%).

(3) No employer shall be assigned a classified contribution rate higher than the second classified rate above the rate which was assigned to him for the last preceding calendar year except for the year 1961 and further as hereinafter provided. This subsection shall not apply when the employer's chargeback ratio exceeds one hundred per cent (100%).

(4) An employer whose benefit payments (charged as most recent employer) in the last three (3) years preceding the computation date exceeded the amount of his contributions for those years, may have the option of making a voluntary contribution to the unemployment compensation fund to cancel the amount by which the benefit payments charged to him under section 87-109 (c) during the last three (3) completed fiscal years exceed his contributions for the same three (3) years. Such voluntary contribution shall be applied first to cancel the amount by which benefits exceed contributions in the earliest of the three (3) years preceding the computation date, any remaining to cancel the excess in the second earliest year preceding the computation date, and any further remaining to cancel the excess in the most recent year preceding the computation date. Whenever the benefit payments charged to an eligible employer in the last three (3) fiscal years exceed his contributions for the same period, the *division* shall notify him of the amount of such excess and the rate which would be applicable to him for the ensuing calendar year, if he exercises the option. Such employer must exercise the option of making the voluntary contribution allowed by this section within thirty (30) days after receipt of such notice.

(5) Rates as fixed by the *division* shall stand and be in effect unless and until the cash reserves in the unemployment compensation trust fund at any time in the future fall below, and remain below, eighteen million dollars ($18,000,000) continuously for a period of one (1) year, then employer rates effective at the beginning of the next succeeding calendar quarter shall be so fixed that they would, if applied to all employers and their total taxable annual payrolls for the preceding calendar year, have yielded total paid contributions equaling approximately two per centum (2%)

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of the total of all such payrolls, and shall continue at the two per centum (2%) average rate until cash reserves in the unemployment compensation trust fund exceed twenty-six million dollars ($26,000,000) at which time all employer rates shall again be so fixed to bring an average return of one and five-tenths per centum (1.5%) as in this section hereinabove provided; if reserves remain below eighteen million dollars ($18,000,000) continuously for a period of two (2) years, then the contribution rate of all employers subject to this act shall return to a uniform rate of three and one-tenth per centum (3.1%) effective at the beginning of the next succeeding calendar quarter, and shall continue at the three and one-tenth per centum (3.1%) rate until cash reserves in the unemployment compensation trust fund exceed twenty-six million dollars ($26,000,000) at which time all employer rates shall again be so fixed to bring an average return of one and five-tenths per centum (1.5%) as in this section hereinabove provided.

(6) The *division* shall by regulation adopt such procedures as may be necessary for the substitution, merging or acquisition of an employer account by an employing unit, and the transfer of such employer account, rights, contributions, benefit experience and ratings to the successor employing unit or units.

(7) The *division* shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the *division* for a redetermination or hearing thereon within thirty (30) days after receipt of such notice.

(8) "Annual total payroll" means the total of the four (4) quarters of total payrolls of an employer preceding the computation date as fixed herein.

(9) No employer's account shall be charged with benefits paid to any claimant in determining the contribution rate of such employer;

(A) If the claimant has been disqualified under section 87-106 (a), (b), (g), or (h), as a result of separation from such employer;

(B) If the claimant left work for nondisqualifying reasons as provided in section 87-106(a);

(C) Unless the employer has had notice of the claim for the benefits and has been given opportunity for hearing as an interested party in the manner provided in sections 87-107 and 87-108. Written notice of any hearing shall be mailed to employer not less than ten (10) days prior to the date set.

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(d) The provisions of this act requiring the payment of contributions by employers subject to this act shall apply only to wages paid up to and including three thousand dollars ($3,000) by an employer to an employee with respect to employment during any calendar year preceding the year 1972.

Payment of contributions shall apply only to wages paid up to and including four thousand two hundred dollars ($4,200) by an employer to an employee with respect to employment during the calendar year 1972 and thereafter.

(e) Contribution appeals.

Any person aggrieved by any decision, determination, or redetermination of the division involving contribution liability, contribution rate, application for refund *or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review* by the *division* or its authorized representative, hereinafter referred to as a deputy. *The* decision of the deputy shall be deemed to be the decision of the *division.* The *division* or the deputy conducting the review may refer the matter to an appeal referee, may decide the application for review on the basis of such facts and information as may be obtained or may hear argument to secure further facts. After such review, notice of the decision shall be given to the employing unit. Such decision made pursuant to such review shall be deemed to be the final decision of the *division* unless the employing unit or any other such interested party, within five (5) calendar days after delivery of such notification or within seven (7) calendar days after such notification was mailed to his last known address, files an appeal from this decision. Such appeal will be referred to an appeal referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in section 87-107 (c)."

Approved: March 6, 1973.

CHAPTER NO. 164

An Act Abolishing the Advisory Council on Communications.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82-3326, R.C.M. 1947, is repealed.

Approved: March 6, 1973.

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CHAPTER NO. 165

An Act Providing For Nomination By Petition in First Class Elementary Districts; Amending Section 75-5915, R.C.M. 1947; and Repealing Section 75-5914, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 75-5914.1, R.C.M. 1947, which reads as follows:

75-5914.1. Any twenty (20) electors qualified under the provisions of section 75-6410 of any first class elementary district may nominate by petition as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than forty (40) days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated. The election shall be conducted with the ballot as specified in section 75-5915.

Section 2. Section 75-5915, R.C.M. 1947, is amended to read as follows:

"75-5915. **Conduct of election and ballot.** The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of section 75-6406, except as provided in section 75-5914.*1*. The trustees shall call and conduct the trustee election in the manner prescribed in this Title for school elections. Any elector qualified to vote under the provisions of section 75-6410 may vote at a trustee election. The trustee election ballots shall be substantially in the following form:

OFFICIAL BALLOT
SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a three (3) year term:

☐ (List the names of the candidates for a three (3) year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a two (2) year term:

☐ (List the names of the candidates for a two (2) year term with a vacant square in front of each name.)

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Vote for (indicate number to be elected) for a one (1) year term:

☐ (List the names of the candidates for a one (1) year term with a vacant square in front of each name.)

In preparing the ballots, only those portions of the prescribed ballot that are applicable to the election to be conducted need to be used. The ballot also shall be prepared with blank lines and vacant squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is subject to election.

When additional trustees in a high school district are to be elected, a separate ballot shall be used in each nominating district showing only the names of those candidates for which the electors of such district are entitled to vote."

Section 3. Section 75-5914, R.C.M. 1947, is repealed.

Approved: March 6, 1973.

CHAPTER NO. 166

An Act to Amend Sections 75-6917 and 75-6918, R.C.M. 1947, to Remove the Requirement That the Board of Public Education Direct the Payments of State Equalization Aid in the Months of December and April and to Remove the Requirement That the Superintendent of Public Instruction Report to the Board of Public Education the Amount of State Equalization Funds in July and December.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-6917, R.C.M. 1947, is amended to read as follows:

"75-6917. **Purpose of state equalization aid and duties of the board of public education for distribution.** The moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, kindgarten, recreation program, school food services program, new buildings, new grounds, and transportation.

The board of *public* education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of *public* education shall:

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(1) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law;

(2) have the power to require such reports from the county superintendents, budget boards, county treasurers, and trustees as it may deem necessary; and

(3) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of *public* education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue."

Section 2. Section 75-6918, R.C.M. 1947, is amended to read as follows:

"75-6918. **Duties of the superintendent of public instruction for state equalization aid distribution.** The superintendent of public instruction shall administer the distribution of the state equalization aid by:

(1) establishing each district's annual entitlement to state equalization aid, based on the data reported in the budget for each district that has been duly adopted for the current school fiscal year and verified by the superintendent of public instruction, and by applying such verified data under the provisions of the state equalization aid allocation procedure prescribed in section 75-6919;

(2) recommending to the board of *public* education the annual entitlement of all districts to state equalization aid to enable the board of *public* education to order the distribution of state equalization aid;

(3) distributing by state warrant the state equalization aid for each district entitled to such aid, to the county treasurer of the county where the district is located, in accordance with the distribution ordered by the board of *public* education;

(4) keeping a record in his office of the full and complete data concerning moneys available for state equalization aid and the entitlements for state equalization aid of the several districts of the state;

(5) reporting to the board of *public* education the estimated amount which will be available for state equalization aid; and

(6) reporting to both branches of the state legislative assem-

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bly in any year when a session is convened the figures and data available in his office concerning distributions of state equalization aid during the preceding two school fiscal years, the amount of state equalization aid then available, the apportionment made of such available moneys but not yet distributed, and the latest estimate of accruals of moneys available for state equalization aid."

Approved: March 6, 1973.

CHAPTER NO 167

An Act to Amend Sections 26-201, 26-202.1 and 26-202.2, R.C.M. 1947, By Eliminating Bison or Buffalo as a Big Game Animal; Providing For Protection of Wild Buffalo; Defining Wild Buffalo.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 26-201, R.C.M. 1947, is amended to read as follows:

"26-201. **Definitions.** For the purpose of this act, the following shall be construed, respectively to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and fur-bearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and single line or single rod in hand or within immediate control.

Upland game birds. Sharptail grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits,

knots, upland plover, kill-deer, sandpipers, Wilson snipes or jack-snipes, snipes, stilts, plovers, willets and yellow legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed nongame birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, *and* bear.

Fur-bearing animals. *Marten* or sable, otter, muskrat, fisher, mink, beaver and black-footed ferret.

Predatory animals. Coyote, wolf, wolverine, weasel, skunk and civet cat, and bobcat.

Game fish. All species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel and muskellunge); all species of the genus micropeterus (bass); all species of the genus polyodon (paddlefish) and all species of the genus acipenser (sturgeon).

Wild buffalo. Buffalo or bison which have not been reduced to captivity."

Section 2. Section 26-202.1, R.C.M. 1947, is amended to read as follows:

"26-202.1. **Licenses—fees—classifications of licenses—fees and powers under licenses.** (1) Class A license—Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of four dollars ($4) shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 license—Resident Game Bird License. Except as herein provided, any resident as defined by section 26-202.3, who is twelve (12) years of age or older, may, upon payment of a fee of two dollars ($2) receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the commission.

(a) No hunting licenses shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course

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of instruction in the safe handling of firearms and for the purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any one of the following: a Class A-3, A-4, A-5, B-2, B-5 or B-6 license, may upon payment of an additional sum of three dollars ($3) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, three dollars ($3); Class A-4, Deer B Tag, five dollars ($5); Class A-5 Elk Tag, three dollars ($3); Class A-6, Black or Brown Bear Tag, five dollars ($5); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

(5) Class B license—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of fifteen dollars ($15) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

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(7) Class B-2 License—Nonresident Big Game License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of one hundred twenty-five dollars ($125) for the license year from May 1, 1967 to April 30, 1968 and thereafter for subsequent license years upon payment of the sum of one hundred fifty dollars ($150) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, and kill game animals in the area or areas designated in the license, as determined by the commission, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of five dollars ($5) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days inclusive of the dates indicated on the license.

(9) Class B-5 License—Nonresident Deer License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-5 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) deer in the area or areas designated in the license, as determined by the commission, and to possess the carcass of same.

(10) Class B-6 License—Nonresident Antelope License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) antelope in the area designated in the license, as determined by the commission, and to possess the carcass of same.

(11) Special licenses. Any applicant who is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

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Mountain Goat, resident fifteen dollars ($15), nonresident thirty dollars ($30);

Mountain Sheep, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Antelope, resident three dollars ($3), nonresident ten dollars ($10);

Grizzly Bear, resident five dollars ($5), nonresident grizzly, black or brown bear, thirty-five dollars ($35).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars ($25) within ten (10) days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid applications for special licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.

(12) Class C License—Trapper's License. Any resident as defined in section 26-202.3, upon making application and paying the sum of ten dollars ($10) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap fur-bearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(13) Class C-1 License—Landowner's Trapping License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1) shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(14) Exception. (a) A resident under the definition of section 26-202.3, who is sixty-five (65) years or older shall be entitled to fish and hunt game birds with a pioneer license issued by the state fish and game commission for a fee of fifteen cents ($.15).

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The form of such license shall be prescribed by the fish and game commission.

(b) Residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) A veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, may fish with a license issued by the head of the hospital on forms prescribed and furnished by the commission. The fee for such license shall be fifteen cents ($.15).

(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(e) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, A-4, and A-5 licenses for one-half (½) of the fees prescribed in this section.

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6 licenses to be issued in each of the hunting districts designated by it.

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(15) Only one (1) license of any one (1) class, except Class B-3 and B-4 licenses, shall be issued to any one (1) person, provided, however, that the commission may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen or destroyed upon payment of the sum of one dollar ($1).

(16) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who is twelve (12) years of age or older, upon payment of the sum of twenty dollars ($20) shall be entitled to a sportsman's license which shall permit the holder to

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exercise all rights granted to holders of Class A, A-1, A-3, A-5 and A-6 licenses. The commission shall furnish each holder of a sportsman's license an appropriate decal."

Section 3. Section 26-202.2, R.C.M. 1947, is amended to read as follows:

"26-202.2. **Special licenses—tagging of carcasses of game animals.** (1) Special licenses authorized to be issued under the general powers of the fish and game commission may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the applicant prior to the time of filing of application for a special license.

(2) Any person who has obtained a grizzly bear, moose, *or* mountain sheep license shall not be eligible to apply for another such license for the next succeeding seven (7) years, if such person has killed or taken an animal of the species for which such special license was issued. Any person who has obtained a grizzly bear, moose, *or* mountain sheep license but did not kill or take an animal of the species for which such special license was issued, shall be eligible to apply for another such license in any succeeding year if he returns his unused special license to the fish and game commission before or at the time application is made. It is further provided that any person who has received a special license for elk or mountain goat shall not be eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game species desired to be killed by the commission reapplication may be made by those valid license holders of the current year who may fall within these limitations. It is further provided that any person who has killed or taken a game animal, except a deer during the current license year, shall not be permitted to receive a special license under this act to hunt or kill a second game animal of the same species.

(3) Tagging of carcasses of game animals. Every license issued by the fish and game commission authorizing the holder thereof to pursue, shoot, kill, capture, take or possess game animals, whether issued to a resident or a nonresident, shall provide such tags, coupons, or markers, as the commission shall prescribe, and when any person should take or kill any game animal under such license, such person shall immediately thereafter cut out, from the tag, coupon or other marker, the date the animal was killed or taken and attach the tag, coupon or other marker to said animal, completely filled out with the name of the license holder, his address, and any other information requested on such tag, coupon or other marker, and such tag, coupon or other marker shall

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be kept attached to said carcass so long as any considerable portion of the carcass remains unconsumed, and when the proper tag, coupon or other marker is attached to said game animal so killed, the same may be possessed, used, stored and transported. Any person who should kill any game animal by authority of any license issued for the killing of such game animal, and shall fail or neglect to cut out day and month of kill or provide such other information as is required and attach his tag, coupon or other marker so provided with the license issued, to the carcass of said game animal or portion thereof, or any person who shall fail to keep said tag, coupon or other marker attached to said game animal or portion thereof while the same is possessed by him shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for by law in section 26-324."

Section 4. Wild buffalo protected. It is unlawful to hunt, shoot, kill, capture or possess wild buffalo except as permitted by rules adopted by the fish and game commission.

Approved: March 6, 1973.

CHAPTER NO. 168

An Act to Amend Section 8-101, R.C.M. 1947, Deleting the Term "School Children" and Inserting the Term "Pupils or Other Students" and Providing that Such Pupils or Other Students Enrolled in Classes are Included in the School Bus Exemption "or While Engaged in Transportation Movements Related to School Activities which are Sponsored or Supervised by School Authorities"; and Providing for an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 8-101, R.C.M. 1947, is amended to read as follows:

"8-101. **Definition of terms.** Unless the language or context clearly indicates that different meanings are intended, the following words, terms and phrases shall, for the purposes of this act, be given the meanings hereinafter subjoined to them.

(a) The word "board" means the board of railroad commissioners of the state of Montana.

(b) The term "corporation" means a corporation, company, association or joint-stock association.

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(c) The term "person" means an individual, firm or copartnership.

(d) The word "certificate" means the certificate of public convenience and necessity authorized to be issued under the provisions of this act.

(e) The term "public highway" means every public street, road, highway, or way in this state.

(f) The term "motor vehicle" shall include all vehicles or machines propelled by any power other than muscular used upon the public highways for the transportation of persons and/or property.

(g) The words "between fixed termini or over a regular route" when used in this act, mean the termini or route between or over which any motor carrier usually or ordinarily operates any motor vehicles, even though there may be periodical or irregular departures from said termini or route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini, or over a regular route, or otherwise, within the meaning of this act, shall be a question of fact to be determined by the board.

(h) The term "motor carrier," when used in this act, means every person or corporation, their lessees, trustees, or receivers appointed by any court whatsoever, operating motor vehicles upon any public highway in the state of Montana for the transportation of persons and/or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking; provided that nothing in this act shall be construed as affecting motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation, or, the operation of school buses which are used in conveying *pupils or other students enrolled in classes* to and from district or other schools, *or in transportation movements related to school activities which are sponsored or supervised by school authorities,* or the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by any person, firm or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, in so far as the use of employees, supplies and materials in construction and production is concerned, or the transportation of property by motor vehicle within any city, town, or village with a population, according to the latest United States census, of less than five hundred (500) persons, or within the com-

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mercial areas thereof as determined by the board, or the transportation of newspapers, newspaper supplements, periodicals or magazines, or those tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked or disabled vehicles or while such tow trucks and wreckers are rendering assistance to abandoned, wrecked or disabled vehicles, or ambulances.

(i) The words "for hire" mean for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering or buy-and-sell arrangements whereby a remuneration is obtained or derived for transportation service. An accommodative transportation movement by a person not in the transportation business shall not be construed as a service for hire, even though the persons owning the property transported or persons transported share in the cost or pay for the movement. Nothing in this act shall be construed so as to prevent bona fide leases, brokerage agreements or buy-and-sell agreements.

(j) The word "compensation," as used in this act, shall mean the charge imposed upon motor carriers in consideration of the use of the highways in this state by such motor carriers, as provided in section 8-116.

(k) The word "railroad" means the movement of cars on rails, regardless of the motive power used therefor."

Section 2. This act is effective on its passage and approval.

Approved: March 6, 1973.

CHAPTER NO. 169

An Act to Amend Section 75-7019, R.C.M. 1947, to Clarify the Intent of the Law Which Stipulates the Distance that a Family Must Reside from a School Bus Stop in Order to be Entitled to Individual Transportation.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7019, R.C.M. 1947, is amended to read as follows:

"75-7019. **Schedule of maximum reimbursement for individual transportation including provisions for isolation, room and board, and supervised study programs.** The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county

sources of transportation revenue under the provisions of sections 75-7022 and 75-7023. These rates also shall constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall *reimburse* the parent or guardian on the basis of the following schedule:

(1) When the parent or guardian provides the transportation conveyance, the following per diem rates shall be used to determine the total reimbursable amount for all eligible transportees residing in one household, including both elementary and high school pupils; except that eligible transportees shall be considered as coming from separate households when such eligible transportees are required by the trustees to attend schools in entirely separate communities and cannot be transported by the same conveyance or cared for in the same community. When the distance from the eligible transportee's residence to his assigned school is:

(a) not less than three (3) miles but less than five (5) miles, the rate shall be thirty cents ($.30) for one (1) eligible transportee and twelve cents ($.12) for each additional eligible transportee but shall not exceed sixty-six cents ($.66) for all the eligible transportees of one household;

(b) not less than five (5) miles but less than seven (7) miles, the rate shall be thirty-six cents ($.36) for one (1) eligible transportee and twelve cents ($.12) for each additional eligible transportee but shall not exceed eighty-four cents ($.84) for all the eligible transportees of one household.

(c) not less than seven (7) miles but less than twelve (12) miles, the rate shall be forty-eight cents ($.48) for one (1) eligible transportee and twelve cents ($.12) for each additional eligible transportee but shall not exceed one dollar and eight cents ($1.08) for all the eligible transportees of one household; or

(d) twelve (12) or more miles, the rate shall be sixty cents ($.60) for one (1) eligible transportee and twelve cents ($.12) for each additional eligible transportee but shall not exceed one dollar and twenty cents ($1.20) for all the eligible transportees of one household.

(2) When the parent or guardian provides the transportation conveyance from the eligible transportee's residence to an approved route of the school bus designated by the trustees for the transportation of such eligible transportee, the per diem rates prescribed in subsection (1) shall be used to determine the reimbursable

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amount for such transportation on the basis of the distance from the *child's* residence to *an established* bus route *stop*. When the distance from the eligible transportee's residence to the approved bus route *stop* is not less than one and one-half (1½) miles but less than three (3) miles, the reimbursement rate shall be one-half (½) the rate prescribed in subsection (1)(a) above. No transportation reimbursement shall be paid to a parent or guardian when the distance *from the child's residence* is less than one and one-half (1½) miles *from an established bus route stop.*

(3) Where, due to excessive distances, impassable roads or other special circumstances of isolation, the rates prescribed in subsections (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, his parent or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increase rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay such increased rate due to isolation. The board of education shall promulgate a schedule that allows varying percentage increases of the per-day individual transportation rates prescribed in subsections (1) and (2) in relation to the degree of isolation, except that such increases shall not exceed one hundred per cent (100%).

(4) When the isolated conditions of the household where an eligible transportee resides require such eligible transportee to live away from the household in order to attend school, he shall be eligible for the room and board reimbursement. Approval to receive the room and board reimbursement shall be obtained in the same manner prescribed in subsection (3) above. The per diem rate for room and board shall be one dollar and fifty cents ($1.50) for one eligible transportee, sixty cents ($.60) for a second eligible transportee of the same household and thirty cents ($.30) for each additional eligible transportee of the same household.

(5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate shall be the cost of such study;

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provided that the course of instruction is approved by the trustees and supervised by the district.

(6) The schedules provided in this section shall not be altered by any authority other than the legislative assembly of the state of Montana, except as provided in subsection (3)."

Approved: March 6, 1973.

CHAPTER NO. 170

An Act Amending Section 45-1003, R.C.M. 1947, Relating to Liens For Labor and Material Furnished For Use of Oil or Gas Wells or Pipelines By Deleting Any Reference to Perfecting, Priority, and Method of Filing Such Liens; Providing How Such Liens Are Perfected; Providing for the Date Such Liens Shall Arise; Providing for the Preference of Such Lien Over Certain Other Liens; Providing That All Liens Affixed By Virtue of Chapter 10 of Title 45, R.C.M. 1947, Upon the Same Property Shall be of Equal Standing; and Providing for the Priority of Such Lien Over Mortgage or Other Liens.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 45-1003, R.C.M. 1947, is amended to read as follows:

"45-1003. **Manner of enforcing liens—duty of county clerks.** The liens herein created shall be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws of Montana for materialmen's and mechanic's liens."

Section 2. There is a new section to be numbered 45-1004.1, R.C.M. 1947, which reads as follows:

45-1004.1. **How lien perfected.** Every person, corporation or copartnership claiming a lien under this chapter shall file with the county clerk of the county in which such land, leasehold, or pipeline, or some part thereof, is situated, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and his mailing address, a description of the leasehold or pipeline, and if the claimant be a claimant under section 45-1002, the name of the person for whom the labor was immediately performed or the material or services

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were immediately furnished. Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under contract as aforementioned.

Section 3. There is a new section to be numbered 45-1004.2, R.C.M. 1947, which reads as follows:

45-1004.2. **Date lien arises—preference over other liens—parity of liens.** The lien provided for in this chapter arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor. Upon compliance with the provisions of section 45-1004.1, such lien shall be preferred to all other titles, charges, liens or encumbrances which may attach to or upon any of the property upon which a lien is given by this chapter subsequent to the date the lien herein provided for arises. All liens affixed by virtue of this chapter upon the same property shall be of equal standing.

Section 4. There is a new section to be numbered 45-1004.3, R.C.M. 1947, which reads as follows:

45-1004.3. **Priority of lien over mortgage or other liens.** The lien herein provided for shall have no priority over other liens, encumbrances or mortgages which are filed or recorded prior to the date of the furnishing of the first item of material or services or the date of performance of the first labor.

Approved: March 6, 1973.

CHAPTER NO. 171

An Act to Amend Section 23-3101, R.C.M. 1947, Relating to Election Precincts, By Providing That County Commissioners May Change Precinct Boundaries in the Years in Which General Biennial Elections Are Held, When Such Changes Are Required to Conform to a Reapportionment Plan.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 23-3101, R.C.M. 1947, is amended to read as follows:

"23-3101. **Establishment of election precincts—change of boundaries—certification of changes—designation—map—boundary to conform to wards or school districts.** (1) The territorial unit for elections is the election precinct.

(2) The commissioners of each county shall establish a convenient number of election precincts equalizing the number of electors in each precinct as nearly as possible.

(3) The commissioners may change the boundaries of precincts but not between January 1 and December 1 in any year during which a general biennial election will be held, *except that the commissioners may change the boundaries of precincts in the year during which a general biennial election will be held when the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of reapportionment plans under article V, section 14, of the 1972 Montana constitution. In those instances, the changing of precinct boundaries must be accomplished within sixty (60) days of the filing of the final reapportionment plan.*

(a) All changes must be certified to the registrar three (3) days or less after the change is made.

(b) All election precincts shall be designated by numbers, names, or both.

(c) Not more than ten (10) days after an order of the commissioners has established or changed the boundaries of an election precinct, the commissioners shall cause to be prepared and delivered a map to the registrar showing the borders of all precincts and school districts within the county.

(4) The boundaries of election percincts *may* conform to the wards of cities of the first, second, and third class and the boundaries of first class school districts.

(5) A ward or school district may be divided into two (2) or more precincts, and a precinct may be divided into two (2) or more polling places.

(6) In cities not of the first, second, or third class, precincts may include two (2) or more wards, or may comprise territory included by one (1) or more wards together with contiguous territory lying outside the incorporated limits of the cities.''

Approved: March 6, 1973.

CHAPTER NO. 172

An Act Amending Section 8-102, R.C.M. 1947, Providing That Class C Carriers Distributing, Delivering or Collecting Wares, Merchandise or Commodities, or Transporting Persons, Shall

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Do So Under Six (6) Contracts, Charters, Agreements or Undertakings or less Annually; That Every Class C Motor Carrier Providing Such Transportation Service By Means of More Than Six (6) Contracts, Charters, Agreements or Undertakings Shall Be Deemed Providing Common Carriage and Shall Operate Under a Class B Motor Carrier Certificate in Lieu of Such Class C Certificate; That All Class C Motor Carriers Must Submit to This Commission the Names and Addresses of All Persons, Firms, Corporations or Other Legal Entity With Whom the Said Class C Carrier Has Executed a Contract, Agreement, or Undertaking for the Distribution, Delivery or Collection of Wares, Merchandise or Commodities, or Transporting Persons; and Providing for an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 8-102, R.C.M. 1947, is amended to read as follows:

"8-102. **Classification of motor carriers—operation according to provisions of act required.** (a) Motor carriers are hereby divided into three (3) classes for the purposes of this act, to be known as:

Class A motor carriers,

Class B motor carriers,

Class C motor carriers.

Class A motor carriers shall embrace all motor carriers operating between fixed termini or over a regular route, under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

Class B motor carriers shall embrace all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale, and not between fixed termini or over a regular route.

Class C motor carriers shall embrace all motor carriers operating motor vehicles for distributing, delivering or collecting wares, merchandise, or commodities, or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement or undertaking. *Such class C motor carriers distributing, delivering or collecting wares, merchandise or commodities, or transporting persons shall do so under six (6) contracts, charters, agreements or undertakings or less annually. Every class C motor carrier providing such transportation services by means of more than six (6) contracts, charters, agreements or*

undertakings shall be deemed to be providing common carriage and shall operate under a class B motor carrier certificate in lieu of such class C motor carrier certificate. All class C motor carriers must annually submit to this commission the names and addresses of all persons, firms, corporations or other legal entity with whom the said class C carrier has executed a contract, charter, agreement or undertaking for the distribution, delivery or collection of wares, merchandise or commodities, or transporting persons.

(b) It shall be unlawful for any corporation or person, its or their officers, agents, employees, or servants, to operate any motor vehicle for the transportation of persons and/or property for hire on any public highway in this state except in accordance with the provisions of this act."

Section 2. This act is effective on its passage and approval.

Approved: March 6, 1973.

CHAPTER NO. 173

An Act Providing That Every Motor Carrier May Petition the Commission to Suspend its Intrastate Operating Authority for a Period not to Exceed Six (6) Months; Providing That an Additional Six (6) Months' Suspension May Be Requested and Granted, but no Other; That Such Suspension Be Granted Upon a Showing of Present Absence of Public Convenience and Necessity or Other Showing of Matters Affecting Motor Carrier Transportation; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 8-107.1, R.C.M. 1947, which reads as follows:

8-107.1. Every motor carrier as defined within this act, may petition this commission in writing to suspend its intrastate operating authority for a period not to exceed six (6) months. An additional six (6) months' suspension may be requested and granted, but no other. Such suspension may be granted by the commission upon a showing of present absence of public convenience and necessity, or other showing of matters affecting motor carrier transportation.

Section 2. This act is effective on its passage and approval.

Approved: March 6, 1973.

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CHAPTER NO. 174

An Act Amending Section 8-101, R.C.M. 1947, Deleting Certain Provisions Under Definition of Term "Motor Vehicle"; Providing Further for the Definition of "Motor Vehicles" to Include All Vehicles, Motor Trucks, Tractors or Other Self-Propelled Vehicles Used for the Transportation of Property or Persons Over the Public Highways of the State and any Trailer, Semitrailer, Dollie or Other Vehicle Drawn Thereby; and Providing for an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 8-101, R.C.M. 1947, is amended to read as follows:

"8-101. **Definition of terms.** Unless the language or context clearly indicates that different meanings are intended, the following words, terms and phrases shall, for the purposes of this act, be given the meanings hereinafter subjoined to them.

(a) The word "board" means the board of railroad commissioners of the state of Montana.

(b) The term "corporation" means a corporation, company, association or joint-stock association.

(c) The term "person" means an individual, firm or copartnership.

(d) The word "certificate" means the certificate of public convenience and necessity authorized to be issued under the provisions of this act.

(e) The term "public highway" means every public street, road, highway, or way in this state.

(f) The term "motor vehicle" shall include all vehicles or machines, *motor trucks, tractors or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state, and any trailer, semitrailer, dollie or other vehicle drawn thereby.*

(g) The words "between fixed termini or over a regular route" when used in this act, mean the termini or route between or over which any motor carrier usually or ordinarily operates any motor vehicles, even though there may be periodical or irregular departures from said termini or route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini, or over a regular route, or otherwise, within the meaning of this act. shall be a question of fact to be determined by the board.

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(h) The term "motor carrier," when used in this act, means every person or corporation, their lessees, trustees, or receivers appointed by any court whatsoever, operating motor vehicles upon any public highway in the state of Montana for the transportation of persons and/or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking; provided that nothing in this act shall be construed as affecting motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation, or, the operation of school buses which are used in conveying school children to and from district or other schools, or the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by any person, firm or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, in so far as the use of employees, supplies and materials in construction and production is concerned, or the transportation of property by motor vehicle within any city, town, or village with a population, according to the latest United States census, of less than five hundred (500) persons, or within the commercial areas thereof as determined by the board, or the transportation of newspapers, newspaper supplements, periodicals or magazines, or those tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked or disabled vehicles or while such tow trucks and wreckers are rendering assistance to abandoned, wrecked or disabled vehicles, or ambulances.

(i) The words "for hire" mean for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering or buy-and-sell arrangements whereby a remuneration is obtained or derived for transportation service. An accommodative transportation movement by a person not in the transportation business shall not be construed as a service for hire, even though the persons owning the property transported or persons transported share in the cost or pay for the movement. Nothing in this act shall be construed so as to prevent bona fide leases, brokerage agreements or buy-and-sell agreements.

(j) The word "compensation," as used in this act, shall mean the charge imposed upon motor carriers in consideration of the use of the highways in this state by such motor carriers, as provided in section 8-116.

(k) The word "railroad" means the movement of cars on rails, regardless of the motive power used therefor."

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Section 2. This act is effective on its passage and approval.

Approved: March 6, 1973.

CHAPTER NO. 175

An Act Amending Section 82-808, R.C.M. 1947, Concerning Registration Fees in the Montana Apiculture Laws; and Providing An Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82-808, R.C.M. 1947, is amended to read as follows:

"82-808. **Registration fees.** Each year before a certificate of registration shall be issued for any apiary, the owner or applicant for such certificate shall pay to the *department of agriculture* a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed by each applicant, firm or corporation in the state of Montana:

1 to 10 colonies of bees	$ *2.50*
11 to 50 colonies	*5.00*
51 to 200 colonies	*10.00*
201 to 300 colonies	*15.00*
301 to *500* colonies	*20.00*
501 to 1000 colonies	*30.00*
1001 to 2000 colonies	*35.00*
2001 to 3000 colonies	*45.00*
3001 to 4000 colonies	*55.00*
4001 to 5000 colonies	*65.00*
5001 colonies and upward	*75.00*

If, after the registration is made for the ensuing year, additional or new colonies are added, the same shall be reported as in this act provided and fees shall be paid in accordance with the above schedule for the total number of colonies for that year."

Section 2. This act is effective June 1, 1973.

Approved: March 7, 1973.

CHAPTER NO. 176

An Act to Amend Section 75-7116, R.C.M. 1947, to Remove the Taxpayer Status as a Requirement to Vote in School District Bond Elections.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7116, R.C.M. 1947, is amended to read as follows:

"75-7116. **Notice of bond election by separate purpose.** Any school district bond election shall be conducted in accordance with the school election provisions of this Title except that the election notice required therein shall be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of school District No. ..... of ..... County, state of Montana, that pursuant to a certain resolution duly adopted at a meeting of the board of trustees of said school district held on the ..... day of ....., A.D., 19....., *an* election of the registered electors of School District No. ..... of ..... County, state of Montana, will be held on the ..... day of ....., A.D., 19....., at ..... for the purpose of voting upon the question of whether or not the trustees shall be authorized to issue and sell bonds of said school district in the amount of ..... dollars ($.....), bearing interest at a rate not more than seven per cent (7%) per annum, payable semiannually, for the purpose of ..... (here state purpose). The bonds to be issued will be either amortization or serial bonds, and amortization bonds will be the first choice of the board of trustees. The bonds to be issued, whether amortization or serial bonds, will be payable in installments over a period not exceeding ..... (state number) years.

The polls will be open from ..... o'clock .....m. and until ..... o'clock .....m. of the said day.

Dated and posted this ..... day of ....., A.D., 19.....

.....
Chairman of School District No. ..... of .....County,
State of Montana

If the bonds proposed to be issued are for more than one purpose, then each purpose shall be separately stated in the notice together with the proposed amount of bonds therefor."

Approved: March 7, 1973.

CHAPTER NO. 177

An Act to Amend Section 53-438, R.C.M. 1947, to Provide For Noncancellation of Motor Vehicle Liability Insurance and No-

Increase in Premium When the Insured or the Operator Is Not at Fault.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 53-438, R.C.M. 1947, is amended to read as follows:

"53-438. **Motor vehicle liability policy defined.** (a) A "motor vehicle liability policy" as said term is used in this act shall mean an owner's or operator's policy of liability insurance, certified as provided in section 53-436 or section 53-437 as proof of financial responsibility and issued, except as otherwise provided in section 53-437, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance: 1. shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and 2. shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: ten thousand dollars ($10,000) because of bodily injury to or death of one person in any one accident and subject to said limit for one person, twenty thousand dollars ($20,000) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this act as respects bodily injury and death or

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property damage, or both, and is subject to all the provisions of this act.

(e) Such motor vehicle liability policy need not insure any liability under any workmen's compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein: 1. the liability of the insurance carrier with respect to the insurance required by this act shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy;

2. the satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

3. the insurance carriers shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision 2 of subsection (b) of this section;

4. the policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the act shall constitute the entire contract between the parties;

(g) No motor vehicle policy shall be subject to cancellation, termination, or premium increase, due to injury or damage incurred by the insured or operator unless the insured or operator be found to have violated a traffic law or ordinance of the state or a city, be found negligent or contributorily negligent in a court of law, or by the arbitration proceedings contained in Chapter 201 of Title 93 R.C.M. 1947, or pays damages to another party whether by settlement or otherwise.

(h) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this act. With respect to a policy which

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grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(i) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this act.

(j) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(k) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(l) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy."

Approved: March 7, 1973.

CHAPTER NO. 178

An Act Providing Deleting the Requirements for Granting a Motor Vehicle License to a Person Afflicted with Epileptic Type Seizures; Amending Section 3-127, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 31-127, R.C.M. 1947, is amended to read as follows:

"31-127. **What persons shall not be licensed.** The *division of motor vehicles* shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of sixteen (16) years, with these exceptions:

(a) The *division* may issue an operator's license to a person who is fifteen (15) years if he has passed a driver's education course approved by the *division* and the superintendent of public instruction.

(b) The *division* may issue a restricted license as hereinafter provided to any person who is at least thirteen (13) years of age;

2. To any person, as a chauffeur, employed by another for the principal purpose of driving a motor vehicle when in use exclusively

for the transportation of property for compensation, who is under the age of eighteen (18) years, nor to any person, as a chauffeur, who is employed by another for the principal purpose of driving a motor vehicle transporting passengers for hire or transporting school children, who is under the age of twenty-one (21) years;

3. To any person, as an operator or chauffeur, whose license has been suspended during *the* suspension, nor to any person whose license has been revoked, except as provided in section 31-149;

4. To any person, as an operator or chauffeur, who is an habitual drunkard, or is addicted to the use of narcotic drugs.

5. To any person, as an operator or chauffeur, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

6. To any person, as an operator or chauffeur, who is required by this act to take an examination, unless *the* person shall have successfully passed such examination;

7. To any person who is required under the provisions of the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

8. To any person as an operator or chauffeur, who is suffering from any form of epileptic type seizures or similar disorders characterized by lapse of consciousness or control, either temporary or prolonged, which is or may become chronic: provided that the *division* may in its decretion issue a license to a person suffering from epileptic type seizures or similar disorder characterized by lapse of consciousness or control, if otherwise qualified to be licensed to drive a motor vehicle, when the afflicted person can show *through a written report from his attending physician* that he has not experienced an epileptic type seizure or similar disorder characterized by lapse of consciousness or control for a *sufficient period and that the condition is stabilized as attested to by said physician.''*

Approved: March 7, 1973.

CHAPTER NO. 179

An Act Amending Section 69-6013, R.C.M. 1947, Relating to the Duty of County Attorney with Respect to Refuse Disposal Districts and Boards; Providing an Exception to the Duty of County Attorney to Defend Suits; Providing for Employment

of Counsel by a Refuse Control District or Board in Certain Cases.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 69-6013, R.C.M. 1947, is amended to read as follows:

"69-6013. **Duty of county attorney.** The county attorney shall be the legal advisor of the refuse disposal districts and boards within the county of his jurisdiction and shall prosecute and defend all suits to which the districts may be a party. *A district or board may employ special legal counsel to defend any such suits in the event a conflict of interest would prohibit such defense by county attorney.*"

Approved: March 7, 1973.

CHAPTER NO. 180

An Act Amending Section 81-2404, R.C.M. 1947, to Permit Transfer of Funds Among State Land Income Accounts for the Purposes of Defraying the costs of Developing the Lands.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 81-2404, R.C.M. 1947, is amended to read as follows:

"81-2404. **Restriction on use of income from school and institutional lands.** Moneys in the account derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands, shall be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust*; provided, however, that if the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred shall be reimbursed by a method approved by the board.*"

Approved: March 7, 1973.

CHAPTER NO. 181

An Act to Amend Section 87-110, R.C.M. 1947, Providing Period of Coverage and Election for Coverage By Exempt Employers

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and Political Subdivisions; Amendments to Conform With Reorganization as Provided in Title 82A, Chapter 10, R.C.M. 1947; and Deletion of Language no Longer Applicable.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 87-110, R.C.M. 1947, is amended to read as follows:

"87-110. **Period, election and termination of employer's coverage.**

(a) Any employing unit which is or becomes an employer subject to this act within any calendar year, shall be subject to this act during the whole of such calendar year, *except that this subsection shall not apply to an employing unit electing coverage as provided for in subsections (c) and (d) of this section.*

(b) Except as otherwise provided in subsection (c) *and (d)* of this section an employing unit shall cease to be an employer subject to this act only as of the first day of January, of any calendar year, only if it files with the *division* prior to the last day of February, of such year, a written application for termination of coverage, and the *division* finds that the total wages payable for employment by said employer in the preceding calendar year did not exceed five hundred dollars ($500). For the purpose of this subsection, the two (2) or more employing units mentioned in paragraph (2) or (3) of section 87-148 (i) shall be treated as a single employing unit.

(c) An employing unit not otherwise subject to this act, or any employing unit for which services are performed that do not constitute employment as defined in this act, may file with the *division,* a written election that all such services performed by individuals in its employ in one (1) or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this act for not less than two (2) calendar years. Upon the written approval of such election by the *division,* such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1, of any calendar year subsequent to such two (2) calendar years only if at least thirty (30) days prior to such first day of January such employing unit has filed with the *division* a written notice to that effect.

(d) Any political subdivision of this state may elect to cover under this act service performed by employees in all the hospitals and institutions of higher education as defined in section 87-148 (n) *and* (o), operated by such political subdivision. The election

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may exclude any services described in section 87-148 (j)(7)(A). Election is to be made by filing with the *division* a *written* notice of such election. *The effective date of the written election shall be any date after December 31, 1971, designated by the employing unit, provided that the date shall not be prior to January 1 of the calendar year in which the written election has been filed.* Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided in section 87-109 (b)(4). An election under this section may be terminated, by filing with the *division* written notice not later than thirty (30) days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date."

Approved: March 7, 1973.

CHAPTER NO. 182

An Act to Amend Section 25-508, R.C.M. 1947, to Provide for Expenses for County Treasurers When Attending a General Association Meeting.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 25-508, R.C.M. 1947, is amended to read as follows:

"25-508. **Traveling expenses of officers attending conventions.** (1) Hereafter no state, county, city or school district officer or employee of the state or of any county or city, or of any school district, shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers save and except for attendance upon such convention, meeting or other gatherings as said officer or employee may by virtue of his office find it necessary to attend, and provided further, that the board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees, or any other strictly educational association and authorize the payment of dues to such association, and the necessary traveling expenses of employees, or members of said board, to attend meetings of such association, or other meetings called for the express purpose of considering educational matters.

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(2) Provided, further, three (3) members of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance upon any general meeting of county commissioners or assessors held within the state not oftener than once a year and the proportionate expenses and charges against each county as a member of such association shall also be paid; provided also that county attorneys, sheriffs, and justices of the peace are hereby authorized to attend their respective meetings or conventions held within the state and are allowed actual traveling expenses not oftener than once a year for attending same.

(3) Provided, further, that nothing herein shall be construed to prevent any city or town council, commission or other governing body from paying membership fees and dues in any organization of city and town officials whose purpose is improvement of laws relating to city and town government and their better and more economical administration, and the necessary expense of any regular officer or employee of such city or town in attending any convention or meeting of such organization upon the direction of such council, commission, or other governing body by order upon its minutes stating that the public interest requires such attendance; such payment of membership fees, dues and/or expense to be made from such fund of the city or town as the council, commission or other governing body shall direct by such order, upon claim presented, audited and allowed as are other claims against such city or town.

(4) Provided, further, that all county clerk and recorders of the various counties throughout the state of Montana shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana association of county clerk and recorders held within the state not oftener than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

(5) Provided, further, that all county clerks of the district court of the various counties throughout the state of Montana shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana association of clerks of court held within the state, not oftener than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

(6) Provided, further, that all county treasurers of the various counties throughout the state of Montana shall be allowed actual transportation expenses and per diem allowance for attendance upon

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any general meeting of the Montana association of county treasurers held within the state, not oftener than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county."

Approved: March 7, 1973.

CHAPTER NO. 183

An Act to Amend Section 93-1906, R.C.M. 1947, to Increase Annual Salary of Court Reporters.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-1906, R.C.M. 1947, is amended to read as follows:

"93-1906. **Salary and expenses of reporter—apportionment.** Every reporter appointed under the provisions of this chapter receives an annual salary of *twelve thousand five hundred dollars ($12,500)* and no other compensation except as provided in section 93-1904, provided, however, that all transcripts and bills of exceptions required by the county shall be furnished without cost, payable in monthly installments out of the general funds of the counties comprising the district for which he is appointed, according and in proportion to the number of civil and criminal actions entered and commenced in the district courts of such counties respectively in the preceding year; and it shall be the duty of the judge of such district, on the first day of January of each year, or as soon thereafter as may be, to apportion the amount of such salary to be paid by each county in his district on the basis aforesaid. The reporter is allowed, in addition to the salary and fees above provided, in judicial districts comprising more than one (1) county, his actual and necessary expenses of transportation and living when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, said expenses to be apportioned and payable in the same way as the salary."

Approved: March 7, 1973.

CHAPTER NO. 184

An Act Amending Section 82-1208, R.C.M. 1947, Relating to Appointment of Acting Fire Marshals, Special Deputy Fire Marshals and Fire Marshal's Employees.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82-1208, R.C.M. 1947, is amended to read as follows:

"82-1208. **Special deputy fire marshals—acting fire marshal—fire marshal's employees.** (1) In an emergency, or during the absence or disability of the state fire marshal, the *attorney general* may appoint an acting fire marshal, who shall perform the duties of the office, or any duty which may be assigned to him, such appointment to cease when the necessity therefor has been relieved.

(2) The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties. When performing these duties or attending a training course conducted by the state fire marshal, special deputy fire marshals may be paid at a rate not to exceed *forty dollars ($40)* per day plus per diem allowance for expenses and mileage at the same rates specified for state employees.

(3) The fire marshal may appoint assistants and clerical employees to perform duties as specified by the marshal to assist in carrying out the duties assigned him by law."

Approved: March 7, 1973.

CHAPTER NO. 185

An Act to Amend Section 15-2014, R.C.M. 1947, to Allow Compensation to Broker-Dealer for Certain Exempt Transactions.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 15-2014, R.C.M. 1947, is amended to read as follows:

"15-2014. **Exempt transactions.** Except as hereinafter in this section expressly provided, sections 15-2006 through 15-2012 shall not apply to any of the following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not.

(2) Any nonissuer distribution of an outstanding security by a registered broker-dealer if (a) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen (18) months, and a profit and loss statement for either the fiscal year preceding

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that date or the most recent year of operations, or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal interest, or dividends on the security.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(5) Any transaction by an executor, administrator, sheriff, marshall, receiver, trustee in bankruptcy, guardian, or conservator, in the performance of his official duties as such.

(6) Any transaction executed by a bona fide pledgee without any purpose of evading this act.

(7) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(8) Any transaction pursuant to an offer directed by the offerer to not more than ten (10) persons (other than those designated in subsection (7)) in this state during any period of twelve (12) consecutive months, whether or not the offerer or any of the offerees is then present in this state, if (a) the seller reasonably believes that all the buyers are purchasing for investment, and (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer, *provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the Federal Securities and Exchange Act of 1933 as amended.*

(9) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten (10), and (c) no payment is made by any subscriber.

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(10) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection.

(11) Any offer (but not a sale) of a security for which registration statements have been filed under both this act and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(12) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(13) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation or sale of assets.

The commissioner may by order deny or revoke the exemption specified in subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated this act by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order."

Approved: March 7, 1973.

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CHAPTER NO. 186

An Act to Amend Section 95-1005, R.C.M. 1947, to Require Cities to Remunerate Appointed Counsel Necessary in Proceedings Involving the Violation of City Ordinances.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 95-1005, R.C.M. 1947, is amended to read as follows:

"95-1005. **Remuneration of appointed counsel.** Whenever, in a criminal action or proceeding, an attorney at law represents or defends any person by order of the court, on the ground that the person is financially unable to employ counsel, such attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding. Such costs shall be chargeable to the county in which the proceeding arose, *except in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal, city or police court wherein costs shall be chargeable to the city or town in which the proceeding arose.*"

Approved: March 7, 1973.

CHAPTER NO. 187

An Act to Amend Section 16-3203, R.C.M. 1947, to Provide Four (4) Year Terms for County Auditors Under the 1972 Montana Constitution which has no Limitation on Terms of Legislatively Created County Offices; and to Remove the Requirement that the Auditor be a Male Person.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-3203, R.C.M. 1947, is amended to read as follows:

"16-3203. **Election—term—qualifications.** There *may* be elected in and for each county of the class named in the preceding section, some person to serve as county auditor of the county for which he shall be elected for the term of four (4) years, and until his successor shall be elected and qualified, the term to begin on the first Monday in January succeeding his election. No person shall be eligible to the office of county auditor of any county within the state who shall not have arrived at the age of voting as

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required by the Montana constitution, and who shall not have been for at least two (2) years next preceding his election, a bona fide resident of the county for which he shall be elected or appointed."

Approved: March 7, 1973.

CHAPTER NO. 188

An Act Abolishing the State Conservation Commission, Formerly the Soil Conservation Committee; and Repealing Section 82A-1507, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The state conservation commission, formerly the soil conservation committee, created in section 76-104, R.C.M. 1947, and continued in section 82A-1507, R.C.M. 1947, is abolished.

Section 2. Section 82A-1507, R.C.M. 1947, is repealed.

Approved: March 7, 1973.

CHAPTER NO. 189

An Act to Amend Section 75-7103, R.C.M. 1947, to Permit Issuance of School Bonds for Vocational-Technical Centers.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7103, R.C.M. 1947, is amended to read as follows:

"75-7103. **Trustees may issue bonds for certain purposes.** The trustees of a school district may issue and negotiate bonds on the credit of the school district for the purpose of:

(1) building, altering, repairing, buying, furnishing, equipping a school, teacherage, dormitory, gymnasium, or other building for school purposes *including post-secondary vocational-technical centers* in the school district;

(2) purchasing the necessary lands for a school, teacherage, dormitory, gymnasium, or other building for school purposes in the school district;

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(3) securing a water supply for a school, teacherage, dormitory, gymnasium, or other building for school purposes in the school district;

(4) buying a school bus;

(5) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(6) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; or

(7) funding a judgment against the district.

Any money realized from the sale of any bonds issued on the credit of a high school district shall not be used for any of the above purposes in an elementary school district, and such money may be used for any of the above purposes for a junior high school but only to the extent that the ninth grade of the high school is served thereby."

Approved: March 7, 1973.

CHAPTER NO. 190

An Act to Amend Section 89-1706, R.C.M. 1947, to Limit to a Period of Eight (8) Years After Maturity of the Obligation the Lien on Lands in an Irrigation District Created by the Obligation.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-1706, R.C.M. 1947, is amended to read as follows:

"89-1706. **Liens of bonds.** All bonds issued hereunder and all amounts to be paid to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 89-1301 provided, shall be a lien upon all the lands originally or at any time included in the district for the irrigation and benefit of which said irrigation district was organized and said bonds were issued, and for the benefit of which such contract between the district and the United States was made, except upon such lands as may at any time be included in such district on account of the exchange or substitution of water under the pro-

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visions of section 89-1611, if any there be; and all such lands shall be subject to a special tax or assessment for the payment of the interest on and principal of said bonds; and all amounts to be paid to the United States under any such contract between the district and the United States, and said special tax or assessment, shall constitute a first and prior lien on the land against which levied, to the same extent and with like force and effect as taxes levied for state and county purposes.

All liens herein created shall remain upon the lands for a period of eight (8) years after the date of maturity of the obligation; thereafter, the lands and the titles thereto shall be free from any such liens."

Approved: March 7, 1973.

CHAPTER NO. 191

An Act to Amend Section 93-2624, R.C.M. 1947, to Provide a Limitation During Which Actions For Professional Negligence can be Commenced Against Nursing Home Administrators and Long-Term Care Facilities.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-2624, R.C.M. 1947, is amended to read as follows:

"93-2624. **Actions for medical malpractice.** Action for injury or death against a physician or surgeon, dentist, registered nurse, *nursing home administrator,* dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital *or long-term care facility* as the employer of any such person, based upon such person's alleged professional negligence, or for rendering professional services without consent, or for error or omission in such person's practice, shall be commenced within three (3) years after the date of injury or three (3) years after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury whichever occurs last, but in no case may such action be commenced after five (5) years from the date of injury. However, this time limitation shall be tolled for any period during which such person has failed to disclose any act, error, or omission upon which such action is based and which is known to him, or through the use of reasonable diligence subsequent to said act, error or omission would have been known to him."

Approved: March 7, 1973.

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CHAPTER NO. 192

An Act to Amend Section 32-21-149, R.C.M. 1947, to Allow School Buses to use Studded Tires from August 15 Through the Following June 15.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 32-21-149, R.C.M. 1947, is amended to read as follows:

"32-21-149. **Restrictions as to tire equipment.** (a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one (1) inch thick above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and except also that it shall be permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal, which shall in no instance protrude more than one-sixteenth (1/16) of an inch beyond the tire tread, upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. The use of pneumatic tires embedded as herein provided shall be permitted only between the first day of October and the last day of May of each year, except that one such tire may be used for a spare in case of tire failure. *School buses equipped with such embedded pneumatic tires may operate from August 15 through the following June 15.*

(d) The commission and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of traction engines or tractors having covable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon the highway would otherwise be prohibited under this act.

(e) Any person violating the terms of this act shall be guilty of misdemeanor."

Approved: March 7, 1973.

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CHAPTER NO. 193

An Act Amending Section 16-2803, R.C.M. 1947; Providing for Common Jails Among Counties with Operation and Maintenance Costs to be Prorated Among the Using Counties; Eliminating the Requirement that There be a Jail in Each County Seat; Eliminating Statutory Limitation of One Thousand Dollars ($1,000) Which Counties May Spend on a Common Jail; and Repealing Sections 16-2801 and 16-2802, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 16-2802.1, R.C.M. 1947, which reads as follows:

16-2802.1. A jail shall be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the commissioners of two or more counties, it is necessary or desirable to build, provide or utilize a common jail, they may do so in any city or town located within one of the counties so concerned. Such common jail shall be built or provided and kept in good repair at the expense of the counties concerned on a basis as the commissioners of the counties shall agree.

Section 2. Section 16-2803, R.C.M. 1947, is amended to read as follows:

"16-2803. **County jails, by whom kept and for what used.** The common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated. *In the case of more than one county utilizing a common jail as provided in the preceding section, such jail shall be kept by the sheriffs of the counties utilizing the same on a basis as the sheriffs so utilizing the common jail shall agree. The common jails are used as follows:*

1. For the detention of persons committed in order to secure their attendance as witnesses in criminal cases.

2. For the detention of persons charged with crime and committed for trial.

3. For the confinement of persons committed for contempt, or upon civil process, or by other authority of law.

4. For the confinement of persons sentenced to imprisonment therein upon a conviction of crime."

Section 3. Sections 16-2801 and 16-2802, R.C.M. 1947, are repealed.

Approved: March 7, 1973.

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CHAPTER NO. 194

An Act to Amend Section 50-1305, R.C.M. 1947, to Require the Permission of the Owner of Surface Rights Before Mining or Prospecting Operations may be Commenced.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 50-1305, R.C.M. 1947, is amended to read as follows:

"50-1305. **Operations pursuant to prospecting permits or other agreements exempt.** The provisions of this act shall not apply where operations upon land are performed in accordance with the terms of a prospecting permit or a lease covering any mineral interest in said land or other valid agreements authorizing such operations which are in full force and effect."

Approved: March 7, 1973.

CHAPTER NO. 195

An Act to Amend Section 26-202.2, R.C.M. 1947, to Provide That Any Person Who Has Killed or Taken a Mountain Goat Shall Not Be Eligible to Apply for Another License for the Next Succeeding Seven (7) Years.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 26-202.2, R.C.M. 1947, is amended to read as follows:

"26-202.2. **Special licenses—tagging of carcasses of game animals.** (1) Special licenses authorized to be issued under the general powers of the *department of fish and game* may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the applicant prior to the time of filing of application for a special license.

(2) Any person who has obtained a grizzly bear, moose, *mountain goat,* mountain sheep, bison, or buffalo license shall not be eligible to apply for another such license for the next succeeding seven (7) years, if such person has killed or taken an animal of the species for which such special license was issued. Any person who has obtained a grizzly bear, moose, *mountain goat or* mountain sheep, bison or buffalo license but did not kill or take an animal of the species for which such special license was issued, shall be eligible to apply for another such license in any succeeding year

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if he returns his unused special license to the *department of fish and game* before or at the time application is made. It is further provided that any person who has received a special license for elk shall not be eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game species desired to be killed by the *department* reapplication may be made by those valid license holders of the current year who may fall within these limitations. It is further provided that any person who has killed or taken a game animal, except a deer during the current license year, shall not be permitted to receive a special license under this act to hunt or kill a second game animal of the same species.

(3) Tagging of carcasses of game animals. Every license issued by the *department* authorizing the holder thereof to pursue, shoot, kill, capture, take or possess game animals, whether issued to a resident or a nonresident, shall provide such tags, coupons, or markers, as the *department* shall prescribe, and when any person should take or kill any game animal under such license, such person shall immediately thereafter cut out, from the tag, coupon or other marker, the date the animal was killed or taken and attach the tag, coupon or other marker to said animal, completely filled out with the name of the license holder, his address, and any other information requested on such tag, coupon or other marker, and such tag, coupon or other marker shall be kept attached to said carcass so long as any considerable portion of the carcass remains unconsumed, and when the proper tag, coupon or other marker is attached to said game animal so killed, the same may be possessed, used, stored and transported. Any person who should kill any game animal by authority of any license issued for the killing of such game animal, and shall fail or neglect to cut out day and month of kill or provide such other information as is required and attach his tag, coupon or other marker so provided with the license issued, to the carcass of said game animal or portion thereof, or any person who shall fail to keep said tag, coupon or other marker attached to said game animal or portion thereof while the same is possessed by him shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for by law in section 26-324.

Approved: March 7, 1973.

CHAPTER NO. 196

An Act Amending Section 66-804, R.C.M. 1947, Changing the Name of the Montana Examining Board of Cosmetology to Board of

Cosmetologists; Changing the Membership Thereof; and Renumbering the Section As Section 82A-1602.8.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-804, R.C.M. 1947, is renumbered section 82A-1602.8, and is amended to read as follows:

"82A-1602.8. Board of cosmetologists—**appointment—qualifications**—*term. (1) There is a board of cosmetologists.*

(2) The board consists of four (4) members appointed by the governor from a list of eight (8) persons recommended by the Montana state hairdressers' association. Each member shall have actively engaged in the profession of cosmetology for at least five (5) years before his appointment and have been a resident of this state for at least five (5) years immediately before his appointment. Each member shall be at least twenty-five (25) years old and a graduate of a high school or its equivalent. No two (2) members of the board shall be members of or affiliated with a school of cosmetology. The governor shall appoint a fifth member to the board who shall be an attorney licensed to practice law in this state.

(3) Each member shall serve for a term of four (4) years."

Approved: March 7, 1973.

CHAPTER NO. 197

An Act to Amend Section 93-9908, R.C.M. 1947, Relating to Contents of the Complaint in Eminent Domain Proceedings and Who Must Be Styled Defendants Therein.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-9908, R.C.M. 1947, is amended to read as follows:

"93-9908. **The complaint and its contents.** The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners, mortgagees and lienholders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants.

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3. A statement of the right of plaintiff.

4. If a right of way is sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. When application for the condemnation of a right of way for the purposes of sewerage is made on behalf of a settlement, or town, or a county, the county commissioners of the county may be named as plaintiff.

6. If a sand, stratum or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained, and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the state oil and gas conservation commission as set forth in section 93-804."

Approved: March 7, 1973.

CHAPTER NO. 198

An Act to Repeal Section 79-1602, R.C.M. 1947, Authorizing Certain State Departments and Bureaus to Administer Federal Funds For Indians.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 79-1602, R.C.M. 1947, is repealed.

Approved: March 7, 1973.

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CHAPTER NO. 199

An Act Amending the Volunteer Firemen's Pension Plan Under the Volunteer Firemen's Compensation Act; Amending Section 11-2022 and Section 11-2023, R.C.M. 1947; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-2022, R.C.M. 1947, is amended to read as follows:

"11-2022. **Disability, death, insurance and pension benefits.** 1. Every member of a fire company organized in an unincorporated area, town or village under the laws of this state, shall be entitled to receive compensation for disability incurred while in the performance of his duties as such fireman, when such disability necessitates the services of a physician or surgeon, while confined or nonconfined, in the following amounts:

a. If confined to a hospital, the actual cost of hospitalization, and the reasonable charges of a duly licensed physician or surgeon, not to exceed two thousand five hundred dollars ($2,500).

b. If not confined to a hospital, the actual reasonable charges of a duly licensed physician or surgeon, not to exceed seven hundred fifty dollors ($750).

c. If confined to his home, and such confinement necessitates the services of a nurse, then the actual charges of such nurse, together with actual reasonable charges of a duly licensed physician or surgeon, not to exceed one thousand seven hundred fifty dollars ($1,750).

2. Where an injury incurred in line of such duty results in the loss by amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the board shall order them an artificial member or members be furnished to supply the loss thereof. The expense of furnishing such members shall not exceed the following amounts: Hand or arm to elbow, two hundred fifty dollars ($250); arm above elbow, three hundred dollars ($300); foot or leg, two hundred fifty dollars ($250); eye, twenty-five dollars ($25); teeth, one hundred seventy-five dollars ($175). The replacement of an artificial member so furnished shall be required every five (5) years, if necessary.

3. To aid in defraying funeral expenses of a fireman covered under this act whose death occurs in line of duty, an amount not to exceed the sum of two hundred fifty dollars ($250) shall be allowed.

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4. To encourage and aid volunteer fire departments to maintain group insurance for benefits on account of death or injury incurred by members while in the performance of duties as volunteer firemen, the sum of fifty dollars ($50) per year for each mobile unit of fire-fighting equipment, not exceeding two (2) such units in number for any such department, shall be paid to each volunteer fire department maintaining such insurance, or to the organization or agency maintaining such insurance for any such volunteer fire department.

5. In the case of every volunteer fireman who shall meet the qualification requirements set forth in subparagraph two (2) of section 11-2023, and then if the claim provided for under subparagraph two (2) of section 11-2024 shall be completed and filed, the claimant shall be entitled thereafter to participate in the volunteer firemen's pension plan as provided in this act, and to receive payments thereunder computed each year in the following manner. Whenever at the close of business on the last day of any fiscal year there shall be a balance in the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund in excess of one million dollars ($1,000,000) then the industrial accident board shall *set aside and* pay over to the public employees' retirement system, *the smaller of such amount in excess of one million dollars ($1,000,000), or an amount equal to ninety-five per cent (95%) of the increase of said account balance over the account balance at the end of the preceding fiscal year,* for the payment by said public employees' retirement system of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing said amount *set aside* by the number of claimants qualifying to participate in such pension plan at the beginning of such succeeding fiscal year. If such amount *set aside* shall be sufficient to pay each such qualified claimant at least twenty dollars ($20) per month throughout such succeeding fiscal year, then such pension shall be paid monthly, on or before the last day of each month of such succeeding fiscal year; but if said amount *set aside* shall not be sufficient to pay each qualified claimant at least twenty dollars ($20) per month, then each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before the fifteenth day of December of such year; provided, however, that in any event the total pension payable hereunder to any qualified claimant shall not exceed the sum of *fifty dollars ($50)* per month, and the amount to be set aside hereunder from the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund at the beginning of any fiscal year for the funding of such pensions shall not in any event exceed the amount necessary to pay such maximum of *fifty dollars ($50)* per month

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to each claimant qualified as of the beginning of such fiscal year. For the purpose of computation and payment of benefits under this act, if children of any volunteer fireman shall become eligible for benefits hereunder, then all children of such volunteer fireman shall be treated collectively as one (1) claimant. The fiscal year for the purpose of this act shall begin on the first day of July of each year and end on the last day of June of each year."

Section 2. Section 11-2023, R.C.M. 1947, is amended to read as follows:

"11-2023. **Qualification for compensation.** (1) In order to qualify for the compensation provided under subparagraphs one (1), two (2), three (3) and four (4) of section 11-2022, the fireman must be an enrolled active member of a fire company organized under the laws of the state of Montana in an unincorporated area, town or village, at the time of such injury or sickness for which compensation hereunder is claimed.

(2) In order to qualify for participation in the volunteer firemen's pension plan under subparagraph five (5) of section 11-2022, a volunteer fireman must meet each of the following requirements:

(A) *Years of service. (I) To qualify for full participation he* must have completed a total of at least *twenty (20) years'* service as an active volunteer fireman and as an active member of a qualified volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village. *(II) If prevented from completing at least twenty (20) years' service by dissolution or discontinuance of his volunteer fire company, or by personal relocation due to transfer or loss of employment, or by personal disability, or by other factor beyond his reasonable control, then he may qualify for partial participation if he has completed at least ten (10) years' service; in that event, he* shall be eligible for only a proportion of the benefits specified in subparagraph five (5) of section 11-2022, determined by multiplying such specified benefits by a fraction, the numerator of which shall be the number of years active service completed, and the denominator of which shall be twenty (20). *(III)* Provided, that from and after July 1, 1965, no volunteer fireman shall receive credit for any year of membership in any such volunteer fire company unless throughout such year such volunteer fire company shall have maintained fire-fighting equipment in serviceable condition of a value of two thousand five hundred dollars ($2,500) or more, and unless throughout such year such volunteer fire company, or the fire district served thereby, shall have been rated in class five (5), six (6), seven (7), eight (8), nine (9), or ten (10) by the board of fire un-

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derwriters for the purpose of fire insurance premium rates; provided, further, that such years of active service shall be cumulative and need not be continuous, and that such service need not be acquired with one (1) single fire company, but may be a total of separate periods of active service with different fire companies organized under the laws of the state of Montana in different fire districts in unincorporated areas, towns or villages. From and after passage of this act, the annual period of service for the purpose of this act shall be the fiscal year; no fractional part of any year shall count toward the service requirement, and to receive credit for any particular year a volunteer fireman must serve with one (1) particular volunteer fire company throughout that entire fiscal year;

(B) He must have attained the age of fifty-five (55) years (but he need not be an active volunteer fireman or an active member of any volunteer fire company at the time of reaching such age);

(C) During each of the years for which he claims credit under subparagraph (A) above, he must have completed a minimum of thirty (30) hours of instruction in matters pertaining to fire fighting, under a program formulated and supervised by the chief of his volunteer fire company;

(D) He must have ceased to be an active member of any volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village, and if he applies for and receives pension benefits hereunder, he shall not thereafter be eligible to become an active member of any such vol-untter fire company;

(E) He must not be eligible for benefits under any fire department relief association organized in any incorporated area.

(F) Provided, however, that any volunteer fireman who is an active member of a volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village at the time of passage of this act shall receive credit against the said service requirement to the extent of one (1) year's credit for each two (2) years' service completed or to be completed by him prior to July 1, 1965, as such active member of any such volunteer fire company or companies; for the purpose of this credit for prior service it shall not be necessary either that the volunteer fire company or companies with which such service has been rendered shall satisfy the requirements of subparagraph (A) above, or that the individual volunteer fireman shall during such prior service have satisfied the requirements of subparagraph (C) above; but in any event no more than ten (10) years' credit shall be allowed any such volunteer fireman by reason of such service prior to July 1, 1965. For the purpose of establishing such prior service credit, the chief

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of each volunteer fire company shall on or before September 1, 1968, prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, setting forth the names and residence addresses of each of the members of his volunteer fire company who shall have qualified for one (1) or more years' credit for prior service, and setting forth the number of years of credit to which each thereof shall be entitled."

Section 3. This act is effective on its passage and approval.

Approved: March 7, 1973.

CHAPTER NO. 200

An Act to Amend Section 84-1855, R.C.M. 1947, Relating to the Refund of Gasoline License Tax on Gasoline Used Off the Public Highways by Establishing a Procedure to be Followed by the Claimant and the Department of Revenue in Estimating the Amount of the Gasoline License Tax Refund; and by Prescribing Records of Use to be Kept by Claimants Who Do Not Elect to Estimate the Amount of Gasoline Tax to be Refunded; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-1855, R.C.M. 1947, is amended to read as follows:

"84-1855. **Refund of gasoline license tax — procedure.** (1) Any person who shall purchase and use any gasoline, on which the Montana gasoline license tax has been paid, for operating or propelling stationary gasoline engines, tractors used off the public highways and streets, motorboats, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, shall be allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Provided, that such refund or drawback should in no instance exceed the tax paid or to be paid, to the state of Montana [, and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the *board of aeronautics* by section 1-501, R.C.M. 1947].

Any distributor paying the gasoline license tax to this state erroneously shall be allowed a credit or refund of the amount of tax so paid.

(2) The application for refund shall be a signed statement on a form furnished by the *department*, accompanied by the *original* invoice or invoices issued to the claimant *at the time of purchase and delivery*, showing the total amount of gasoline purchased, the total amount of gasoline on which a refund is claimed, and the amount of the tax claimed for refund. Such further information pertaining to such claim shall be furnished as required by the *department*, provided that *gallons of gasoline used off the roadways, where not verifiable by records of actual use, may be estimated by the applicant according to the following schedule:*

(a) on the first one thousand (1,000) gallons of gasoline purchased, or any part thereof, forty-five per cent (45%) of gasoline purchased.

(b) on the next one thousand (1,000) gallons of gasoline purchased, or any part thereof, sixty per cent (60%) of gasoline purchased.

(c) on the next one thousand (1,000) gallons of gasoline purchased, or any part thereof, sixty-five per cent (65%) of gasoline purchased.

(d) on any gasoline purchased in excess of three thousand (3,000) gallons, seventy per cent (70%) of gasoline purchased.

If any invoice is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the *department*.

(3) Any applicant who does not elect to estimate the off-highway use of gasoline according to the schedule in subsection (2) shall maintain records as provided for in this subsection.

(a) Highway and off-highway use of gasoline from common storage. Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detail withdrawal records to accurately show the manner in which used. Gasoline on hand, determined by actual measurement, shall be deducted from a claim and shall be reported as an opening inventory on the next claim. Credit for the inventory is allowed on the next claim if filed within fourteen (14) months from the filing date of the claim which established the inventory.

(b) Highway and off-highway use of gasoline from separate storage. If separate storage tanks are maintained for highway use and off-highway use, the bulk purchase invoices shall be so marked by the dealer at the time of delivery. No further record is required,

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provided that no gasoline is withdrawn from the off-highway tank for licensed vehicles. Withdrawal of gasoline from the off-highway tank for licensed vehicles will invalidate this method of determining refundable gallonage.

(c) Use of gasoline from restricted use storage. Special storage facilities in the woods, or in farm fields, or for other uses for certain periods, must be identified and explained. If such storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into such storage.

(d) Gasoline purchased for other than bulk storage. Fuel purchased in small containers for nonhighway use must be identified on the purchase invoice and no further record is required.

(e) Resellers. Service stations, bulk dealers and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for own use upon which a refund is to be claimed.

(f) Proof of highway use. When no highway use of gasoline is deducted from the claim, the applicant must substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department.

(g) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership, if such person has maintained the following records:

(i) the total number of highway miles operated by each licensed motor vehicle, including private passenger cars;

(ii) total gallons of gasoline used in each vehicle to include both refund and nonrefund use;

(iii) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources. Highway use for each vehicle may be determined by actual measurement, or may be computed by dividing the average miles per gallon highway operation consumption rate into the number of highway miles operated.

(4) All applications for refunds shall be filed with the *department of revenue* within fourteen (14) months after the date on which the gasoline was purchased as shown by invoices or after the date on which the tax was erroneously paid. Provided, however, that a distributor may file a claim for refund of taxes erroneously paid within three (3) years after the date of such erroneous payment. *Except in the case of a claim for refund of taxes erroneously*

paid by a distributor, no claimant may make more than one (1) application for refund during any calendar year. The *department* shall have one hundred twenty (120) days after receiving the claim to approve or reject it. If approved, the *department* shall issue a credit in lieu of refund for the amount of the claim, if the claimant is a distributor. For all other persons, a warrant shall be drawn upon the state treasurer for the amount of the claim.

(5) Should the *department of revenue* find that the statement contains errors which are not fraudulently inserted, it may correct the statement and approve it as corrected, or the *department* may require the claimant to file an amended statement. If the state *department of revenue* determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the *department* may reject such claim in full. If a claim is rejected, the *department* may suspend claimant's right to refund for a period not to exceed one (1) year.

(6) Any person, other than a licensed distributor, shall obtain a *license* from the state *department of revenue* prior to selling gasoline on which a refund may be claimed. The application for *license* shall contain the applicant's name, address, place or places of business in the state of Montana, and other information which may be required by the *department. Licenses* issued shall bear a *license* number and the date of issuance. The *department* shall keep a record of all *licenses* issued, canceled, or suspended. *Licenses* shall be issued for the calendar year upon payment of a fee of one dollar ($1) and must be renewed annually before the first day of January.

Any person failing to comply with this subsection shall be subject to a fine of not less than twenty-five dollars ($25) or more than two hundred dollars ($200) or imprisonment in the county jail for a period not less than ten (10) days or more than sixty (60) days, or both fine and imprisonment.''

Section 2. This act is effective on its passage and approval.

Approved: March 7, 1973.

CHAPTER NO. 201

An Act to Amend Section 23-3023, R.C.M. 1947, By Modifying the Requirement of Posting Lists of Registered Voters in Each Precinct.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 23-3023, R.C.M. 1947, is amended to read as follows:

"23-3023. **Printing of list of electors shown on precinct registers.** (1) The registrar shall have a list printed of all registered electors shown on the precinct registers of the county or city ten (10) days or more preceding any election.

(2) The list shall show the name of the elector in full, the number and street of his residence if he resides within a city, his post-office address if he resides outside a city, and the registry number.

(3) A copy of the list of registered voters shall be posted at the polling place. Sufficient copies of the lists shall be retained by the registrar and furnished to an elector upon request.

(4) If no declarations of nomination have been filed forty (40) days before a primary election of city offices, the city clerk shall immediately notify the registrar in writing and the list of registered electors for the city shall not be printed.

(5) The list of registered voters prepared for a primary election may be used for the general election only if a supplemental list giving the names of electors who have registerd after the first list was prepared is printed.

(6) The expense of printing this list shall be paid by the county or city in which the election is to be held."

Approved: March 7, 1973.

CHAPTER NO. 202

An Act Providing Compensation For Injuries Producing Total Permanent Disability Under the Workmen's Compensation Act; Repealing Section 92-702, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-702.1, R.C.M. 1947, which reads as follows:

92-702.1. **Compensation for injuries producing total permanent disability.** Weekly compensation benefits for injury producing total permanent disability shall be sixty-six and two-thirds percent (66⅔%) of the wages received at the time of the injury.

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The maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total permanent disability benefits shall be paid for the duration of the worker's total permanent disability.

In cases where it is determined that periodic benefits granted by the Social Security Act, 42 U.S.C. 301 (1935), are payable because of the injury, the weekly benefits payable under this section shall be reduced by the amount of the federal periodic benefits for such week.

Section 2. Section 92-702, R.C.M. 1947, is repealed.

Approved: March 8, 1973.

CHAPTER NO. 203

An Act Providing Compensation For Injuries Causing Death Under the Workmen's Compensation Act; Repealing Section 92-704, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-704.1, R.C.M. 1947, which reads as follows:

92-704.1. **Compensation for injury causing death.** Weekly compensation benefits for injury causing death shall be sixty-six and two-thirds percent (66⅔%) of the decedent's wages. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. The minimum weekly compensation for death shall be fifty percent (50%) of the state's average weekly wage, but in no event shall it exceed the decedent's actual wages at the time of his death.

Death benefits shall be paid to a widow or widower for life or until remarriage, and in the event of remarriage two (2) years' benefits shall be paid in a lump sum to the widow or widower. In all cases, benefits shall be paid to beneficiaries as defined in this act.

In cases where it is determined that periodic benefits granted by the Social Security Act, 42 U.S.C. 301 (1935), are payable because of the injury causing death, the weekly benefits payable under this section shall be reduced by the amount of the federal periodic benefits for such week.

Section 2. Section 92-704, R.C.M. 1947, is repealed.

Approved: March 8, 1973.

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CHAPTER NO. 204

An Act Providing For More Than Twenty-six (26) Weeks of Temporary Total Disability Compensation Benefits in Cases of Permanent Injury in Nonscheduled Injuries; Amending Section 92-709, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 92-709, R.C.M. 1947, is amended to read as follows:

"92-709. **Compensation in case of specified injuries.** In case of the following specified injuries, compensation for temporary total disability shall be paid at the weekly rate provided in section *92-701.1,* during the healing period, but in no event shall the healing period *for loss of a member* exceed twenty-six (26) weeks. In addition thereto but in lieu of any other compensation provided by this act, compensation *for loss of a member* shall be paid at the weekly rate provided in section *92-703.1,* and shall be paid for the following periods:

For loss of:

One arm at or near shoulder	280 weeks
One arm at the elbow	240 weeks
One arm between wrist and elbow	220 weeks
One hand	200 weeks
One thumb and the metacarpal bone thereof	75 weeks
One thumb at the proximal joint	37 weeks
One thumb at the second distal joint	25 weeks
One first finger and the metacarpal bone thereof	40 weeks
One first finger at the proximal joint	30 weeks
One first finger at the second joint	22 weeks
One first finger at the distal joint	15 weeks
One second finger and the metacarpal bone thereof	37 weeks
One second finger at the proximal joint	20 weeks
One second finger at the second joint	15 weeks
One second finger at the distal joint	8 weeks
One third finger and the metacarpal bone thereof	25 weeks
One third finger at the proximal joint	15 weeks
One third finger at the second joint	10 weeks
One third finger at the distal joint	5 weeks
One fourth finger and the metacarpal bone thereof	15 weeks
One fourth finger at the proximal joint	11 weeks
One fourth finger at the second joint	8 weeks
One fourth finger at the distal joint	6 weeks
One leg at or near the hip joint as to preclude the use an artificial limb	300 weeks

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One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	200 weeks
One leg between knee and ankle	190 weeks
One foot at the ankle	180 weeks
One great toe with the metatarsal bone thereof	37 weeks
One great toe at the proximal joint	18 weeks
One great toe at the second joint	12 weeks
One toe other than the great toe with the metatarsal bone thereof	16 weeks
One toe other than the great toe at the proximal joint	8 weeks
One toe other than the great toe at second or distal joint	5 weeks
One eye by enucleation	165 weeks
Total blindness of one eye	140 weeks
Total loss of hearing, one ear	40 weeks
Total loss of hearing, both ears	200 weeks

In all cases of permanent injury to a member less than loss of the member compensation shall be paid for total temporary disability, without limitation as to time under section 92-701.1. In addition thereto, indemnity benefits for permanent disability to a member or members shall be proportionate to loss or loss of use of the member or members at the weekly rate provided in section 92-703.1. In all other cases of permanent injury, less than total, not included in the above schedule, the compensation *for partial disability* shall bear such relation to the periods stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule or to *partial* disability (500 weeks).

Loss of vision: Where central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the widest diameter of the visual field subtends an angle no greater than 20 degrees, the same as for loss of the eye.

Total loss of use: Indemnity benefits for permanent total loss of use of a member shall be the same as for loss of the member.

Disfigurement: The *division* may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed twenty-five hundred dollars *($2,500)* in addition to any other indemnity benefits payable under this section.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two (2) thereof, in one (1) accident, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character. Provided, however, that the percentage of permanent disability caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to

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any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby; provided, that no payment under this section shall be in lieu of the separate benefit of medical and hospital services."

Approved: March 8, 1973.

CHAPTER NO. 205

An Act Providing For Deletion of Language Referring in Major and Minor Dependents Not Residing in the United States at the Time of the Injury; Amending Section 92-708, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 92-708, R.C.M. 1947, is amended to read as follows:

"92-708. **Compensation to run consecutively—manner of payment.** Compensation shall run consecutively and not concurrently and payment shall not be made for two (2) classes of disability over the same period. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving widow and stepchildren of such widow the compensation shall be divided equally among all beneficiaries. Compensation due to major dependents where there be more than one*(1)*, shall be divided equitably among them and likewise as to minor dependents, and the question of dependency and amount thereof shall be a question of fact for determination by the *division."*

Approved: March 8, 1973.

CHAPTER NO. 206

An Act Amending Section 40-3649, R.C.M. 1947, By Providing An Annual Fee For A License To Act As A Rating Organization.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 40-3649, R.C.M. 1947, is amended to read as follows:

"40-3649. **Examination of application and investigation of applicant—issuance of license.** The commissioner shall examine

each application for license to act as a rating organization and the documents filed therewith and may make such further investigation of the applicant, its affairs and its proposed plan of business as he deems desirable.

The commissioner shall issue the license applied for within sixty (60) days of its filing with him if, from such examination and investigation, he is satisfied that:

(a) The business reputation of the applicant and its officers is good.

(b) The facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish.

(c) The applicant and its proposed plan of operation conform to the requirements of this chapter.

Otherwise, but only after hearing upon notice the commissioner shall, in writing, deny the application and notify the applicant of his decision and his reasons therefor.

The commissioner may grant an application in part only and issue a license to act as a rating organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

Licenses issued pursuant to this section shall remain in effect until revoked as provided in this chapter. *The fee for the license shall be one hundred dollars ($100) annually which shall be deposited in the general fund."*

Approved: March 8, 1973.

CHAPTER NO. 207

An Act Abolishing the Liquor Control Board and Transferring Its Functions to the Department of Revenue and Board of Equalization; Repealing Section 82A-1805, R.C.M. 1947; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 82A-1807, R.C.M. 1947, which reads as follows:

82A-1807. **Liquor control board abolished—functions transferred.** The Montana liquor control board, created in title 4, chap-

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ter 1, is abolished, and its functions are transferred to the department of revenue. Unless inconsistent with this title, any reference in the Revised Codes of Montana, 1947, to the Montana liquor control board means the department of revenue.

Section 2. There is a new section to be numbered 82A-1808, R.C.M. 1947, which reads as follows:

82A-1808. **State board of equalization appeals concerning liquor and beer laws.** Any interested party shall have the right to appeal any decision of the department of revenue concerning the issuance, transfer, suspension or revocation of beer or liquor licenses to the state board of equalization. The appeal shall be heard in conformity with the provisions of the Montana Administrative Procedure Act and the decision of the state board of equalization shall be final unless reversed or modified upon judicial review.

Section 3. Section 82A-1805, R.C.M. 1947, is repealed.

Section 4. This act is to be in full force and effect from and after the date of its passage and approval.

Approved: March 8, 1973.

CHAPTER NO. 208

An Act Amending Section 60-144, R.C.M. 1947, to Require Drillers to Furnish Cores and Cuttings for Core Holes and Tests Less than One Thousand (1,000) Feet in Depth; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 60-144, R.C.M. 1947, is amended to read as follows:

"60-144. **Owners shall make available to commission cores and cuttings.** Any owner drilling a well for gas or oil shall make available to the commission at its field offices representative cores or chips, when available, and the cuttings from such well. Providing, however, that cores, chips or cuttings need not be so made available for a period of six (6) months following completion or abandonment of such wells. As pertains to the furnishing of cores, cutting, or chips, the commission may, however, relieve the owner of any well of the obligation to furnish the same when in the opinion of the commission, the furnishing thereof would be unduly burdensome for such owner; provided, however, that such owner desiring relief must apply to and receive permission from

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the commission to not so furnish. The owner of any stratigraphic test well drilled for the purpose of obtaining lithologic information useful in potential oil and gas operations, as such well is defined by the commission's rules and regulations, shall within six (6) months from the date of the cessation of the drilling of such well, make available to the commission, complete sets of sample cuttings and representative cores or chips and well logs of such wells, which logs shall include among other information the size of casing used and the type and depth of water if any located, and such cuttings, cores, chips and logs shall be impounded and kept secure and confidential by the commission until such time that the commission shall desire to use the same; provided that the commission may not use such logs, chips, cores and cuttings from stratigraphic test wells until a period of three (3) years from the date of their impounding by the commission has elapsed unless the owner of such stratigraphic test well consents to their use by the commission prior to the expiration of the three (3) year period. The commission, during the period of impoundment for any cores, cuttings, chips, or logs from any stratigraphic test well, shall not give any person access to said cores, chips, cuttings or logs, and it shall not disclose any information relating thereto or derived therefrom. The commission shall require, and the owner of any stratigraphic test well shall furnish, prior to the commencement of drilling of such well, a good and sufficient surety bond, to be approved prior to the commencement of such drilling, conditioned upon the proper plugging of such well prior to abandonment, the amount of the said bond to be determined by the estimated depth as in the commission's rules and regulations provided for oil and gas wells, and, prior to abandonment, such wells shall be plugged by the owner thereof, or by the surety should the said owner be in default, such plugging to conform to the standards set down and determined by the commission."

Section 2. This act shall become effective upon its passage and approval.

Approved: March 8, 1973.

CHAPTER NO. 209

An Act Revising Section 89-702, R.C.M. 1947, Relating to the Construction of Dams and Dikes, for Drafting Style; and Amending Section 89-702.1, R.C.M. 1947, Relating to the Jurisdiction of the Department of Natural Resources and Conservation in Inspecting Dams.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-702, R.C.M. 1947, is amended to read as follows:

"89-702. **Dams and dikes to be constructed in a secure manner—proceedings upon complaint of insecurity.** *(1) A* person, association, or corporation *may not* construct, or cause to be constructed, a dam or dike for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

(2) The *department of natural resources and conservation may* at any time on its own motion, *and it shall,* upon complaint on oath being made to the *department* by three *(3)* or more persons residing or having property in such location, that their homes or property would be in danger of destruction or damage in event of flood occuring on account of the breaking of any dam or dike of any reservoir within the state, and that they have reason to believe said reservoir is in an unsafe condition, or that it is being filled with water to such an extent as to render it unsafe, *immediately* examine, or cause to be examined, the reservoir. If, upon *the* examination, the *department finds* that *the* reservoir is unsafe, or is being filled with water to such an extent as to render it unsafe, it shall notify the county attorney of the county in which the reservoir is located, setting forth its findings, and the county attorney shall immediately take the necessary steps to abate the danger and make the structure safe.

(3) If either party *is* dissatisfied with the findings of the *department,* it may appeal to the district court of the district wherein the reservoir is located, and *the* court shall hear and determine the matter at the earliest practical time, subject to the right of either party to appeal as in other civil; *however,* the judgment of the *department* shall control until the final determination of the case."

Section 2. Section 89-702.1, R.C.M. 1947, is amended to read as follows:

"89-702.1. **Jurisdiction of** *department.* Jurisdiction of the *department under section 89-702* applies to any dam or dike which does or will impound or divert water, and which:

(1) has or will have an impounding capacity at *maximum* water storage elevation of *fifty (50)* acre feet or more*; or,*

(2) is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the dam or dike, or from the lowest elevation of the outside limit

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of the dam or dike, if it is not across a stream channel or watercourse, to the maximum storage elevation."

Approved: March 8, 1973.

CHAPTER NO. 210

An Act to Amend Section 95-508, R.C.M. 1947, to Require a Hearing to Determine a Defendant's Present Mental Condition After the Defendant has been Acquitted in a Criminal Proceeding by Reason of a Mental Disease or Defect Excluding Responsibility; and Setting the Burden of Proof in such Proceedings as a Preponderance of the Evidence.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 95-508, R.C.M. 1947, is amended to read as follows:

"95-508. **Legal effect of acquittal on the ground of mental disease or defect excluding responsibility**—*hearing*—**commitment**—**release or discharge.** (a) When a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the court shall order him to be committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care and treatment. *A person so confined shall have a hearing, unless waived, within fifty (50) days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The court shall cause notice of the hearing to be served upon the person, his counsel and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released. According to the determination of the court upon the hearing, the defendant shall be discharged or released on such conditions as the court determines to be necessary, or shall be committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care and treatment.*

(b) If the superintendent of the Montana state hospital believes that a person committed to his custody, pursuant to subsection (a) of this section, may be discharged or released on condition without danger to himself or others, he shall make application for the discharge or release of such person in a report to the court by which such person was committed and shall transmit a copy of such application and report to the county attorney of the county

from which the defendant was committed. The court shall thereupon appoint at least two (2) qualified psychiatrists to examine such person and to report within sixty (60) days, or such longer period as the court determines to be necessary for the purpose, their opinion as to his mental condition. To facilitate such examinations and the proceedings thereon, the court may cause such person to be confined in any institution located near the place where the court sits, which may hereafter be designated by the superintendent of the Montana state hospital as suitable for the temporary detention of irresponsible persons.

(c) If the court is satisfied by the report filed pursuant to subsection (b) of this section, and such testimony of the reporting psychiatrists as the court deems necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on such conditions as the court determines to be necessary. If the court is not so satisfied, it shall promptly order a hearing to determine whether such person may safely be discharged or released. Any such hearing shall be deemed a civil proceeding and the burden shall be upon the committed person to prove *by a preponderance of the evidence* that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall thereupon be discharged or released on such conditions as the court determines to be necessary, or shall be recommitted to the custody of the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedure prescribed above *in subsection (b) and (c).*

(d) If, within five (5) years after the conditional release of a committed person, the court shall determine, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of such person or for the safety of others his conditional release should be revoked, the court shall forthwith order him to be recommitted to the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedure prescribed above *in subsections (b) and (c).*

(e) A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon such application shall be the same as that prescribed above in the case of an application by the superintendent of the Montana state hospital. However, no such application by a committed person need be considered until he has been confined for a period of not less than six (6) months from the date of the order of commitment, and if the determination of the court be adverse to the application, such person shall not be permitted to file a further application until one (1) year has elapsed

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from the date of any preceding hearing on an application for his release or discharge."

Approved: March 8, 1973.

CHAPTER NO. 211

An Act Amending Sections 82A-202 and 82A-1202, R.C.M. 1947, Transferring the Functions of the State Building Code Council from the Department of Law Enforcement and Public Safety to the Department of Administration; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82A-202, R.C.M. 1947, is amended to read as follows:

"82A-202. **Agencies abolished—functions transferred to department.** (1) The department of administration and its units, created in Title 82, chapter 33, R.C.M. 1947, including the state purchasing department created in Title 82, chapter 19, R.C.M. 1947, are abolished, and their functions, except the functions contained in Title 69, chapter 21, R.C.M. 1947 (pertaining to building construction standards), transferred to the department of law enforcement and public safety in chapter 12 of this act, are transferred to the department of administration created in this chapter. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of administration or its units or the state purchasing department, except the references contained in Title 69, chapter 21, R.C.M. 1947, means the department of administration created in this chapter.

(2) The office of state controller, created in Title 82, chapter 1, R.C.M. 1947, the position of the state purchasing agent, created in Title 82, chapter 19, R.C.M. 1947, and the position of budget director, created in Title 79, chapter 10, R.C.M. 1947, are abolished, and their functions, except the functions contained in Title 69, chapter 21, R.C.M. 1947 (pertaining to building construction standards), transferred to the department of law enforcement and public safety in chapter 12 of this act, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state controller, state purchasing agent, or budget director, except the references contained in Title 69, chapter 21, R.C.M. 1947, (pertaining to building construction standards), transferred to the department of law enforcement and public safety in chapter 12 of this act, are transferred to the depart-

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ment. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state controller, state purchasing agent, or budget director, except the references contained in Title 69, chapter 21, R.C.M. 1947, means the department of administration created in this chapter.

(3) The state board of review, created in Title 79, chapter 24, R.C.M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of review means the department of administration created in this chapter.

(4) The Montana highway patrolmen's retirement board, created in Title 31, chapter 2, R.C.M. 1947, is abolished, and its functions, except the quasi-judicial functions transferred to the board of administration in section 82A-211 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana highway patrolmen's retirement board, except the references relating to the quasi-judicial functions transferred to the board of administration in section 82A-211 of this chapter, means the department of administration created in this chapter.

(5) The functions of the state building code council transferred to the department of law enforcement and public safety under section 82A-1202 (6) are transferred to the department of administration."

Section 2. Section 82A-1202, R.C.M. 1947, is amended to read as follows:

"82A-1202. **Agencies abolished—functions transferred to department.** (1) The state bureau of criminal identification and investigation, provided for in Title 80, chapter 20, R.C.M. 1947, is abolished, and its statutory functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state bureau of criminal identification and investigation means the department of law enforcement and public safety.

(2) The position of criminal investigator created within the office of the attorney general in Title 82, chapter 4, R.C.M. 1947, is abolished, and the functions of the position are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the position of criminal investigator means the department of law enforcement and public safety.

(3) The state law enforcement teletypewriter communications committee, provided for in Title 82, chapter 39, R.C.M. 1947, is

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abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the law enforcement teletypewriter communications committee means the department of law enforcement and public safety.

(4) The Montana law enforcement academy advisory board, provided for in Title 75, chapter 52, R.C.M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana law enforcement academy advisory board means the department of law enforcement and public safety.

(5) The office of state fire marshal, created in Title 82, chapter 12, R.C.M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the office of state fire marshal means the department of law enforcement and public safety.

(6) The state building code council, created in Title 69, chapter 21, R.C.M. 1947, is abolished, and its functions are transferred to the department *of administration.* Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state building code council means the department of *administration."*

Section 3. This act is effective upon its passage and approval.

Approved: March 8, 1973.

CHAPTER NO. 212

An Act Amending Section 75-6608, R.C.M. 1947, Relating to the Procedures for Application, Approval, and Criteria for the Isolation of an Elementary or High School.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-6608, R.C.M. 1947, is amended to read as follows:

"75-6608. **School isolation.** The trustees of any district operating an elementary school of less than ten (10) ANB or a high school of less than twenty-five (25) ANB shall *annually* apply to have the school classified as an isolated school. The application shall be submitted by the trustees to the county superintendent by the first day of May each year. Such application shall include:

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(1) the name of each pupil who will attend the school during the ensuing school fiscal year with the distance the pupil resides from the nearest county road or highway; and

(2) a description of conditions affecting transportation such as poor roads, mountains, rivers, or other obstacles to travel, the distance the school is from the nearest open school having room and facilities for the pupils of such school, or any other condition that would result in an unusual hardship to the pupils of the school if they were transported to another school; and

(3) any other information prescribed by the superintendent of public instruction.

The county superintendent shall submit the applications to the board of county commissioners (budget board) for their consideration on or before the fifteenth (15th) day of May. The budget board shall approve or disapprove the application on the basis of the *criteria established by the superintendent of public instruction.* The budget board also may approve an application because of the existence of other conditions which would result in an unusual hardship to the pupils of such school if they were transported to another school.

When an application is approved, the county superintendent shall *submit* such application to the superintendent of public instruction before the *first day* of June. The superintendent of public instruction shall approve or disapprove such application for isolated classification *by the fourth Monday of June on the basis of the information supplied by the application or objective information the superintendent of public instruction may collect on his own initiative. No elementary or high school shall be considered an isolated school until the approval of the superintendent of public instruction has been received."*

Approved: March 8, 1973.

CHAPTER NO. 213

An Act to Amend Section 62-503 to Pay Members of the Board of Horse Racing; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 62-503, R.C.M. 1947, is amended to read as follows:

"62-503. **Chairman—quorum—costs.** The *board* shall organize by electing one (1) of its members chairman. Two (2) members of

the *board* shall constitute a quorum for the transaction of any and all business of the *board.*

The *board* may incur all such costs, charges and expenses as are reasonably necessary in carrying out the intent and purposes of this act.

Each member may be paid twenty-five dollars ($25) for each day in which he is actually and necessarily engaged in the performance of board duties, and shall also be reimbursed for actual and necessary expenses incurred in his official service."

Section 2. This act is effective on its passage and approval.

Approved: March 8, 1973.

CHAPTER NO. 214

An Act Deleting the Mandatory Public Hearing from the Requirements to Receive a Weather Modification Permit and Make the Holding of Such Public Hearing Permissive; Authorizing the Department of Natural Resources and Conservation to Assess the Applicant for the Costs Incurred by the Department in Holding the Hearing; and Amending Section 89-318, R.C.M. 1947, and Provide an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-318, R.C.M. 1947, is amended to read as follows:

"89-318. **Issuance of permits—requirements for permit—***hearing. (1)* The permits shall be issued in accordance with procedures and subject to conditions the board *of natural resources and conservation* may by rule establish to effectuate the provisions of this act, only:

(a) if the applicant is licensed pursuant to this act;

(b) if sufficient notice of intention is published and proof of publication is filed as required in section *89-322* of this act;

(c) if an applicant furnishes proof of financial responsibility in an amount to be determined by the board as required in section *89-323* of this act;

(d) if the fee for the permit is paid as required in section *89-324* of this act;

(e) if the weather modification and control activities to be

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conducted are determined by the board to be for the general welfare and the public good.

(2) The department of natural resources and conservation shall hold a public hearing in the area to be affected by the issuance of the permit, if the board determines that a hearing is necessary. The department may assess the permit applicant for the costs incurred by the department in holding the hearing."

Section 2. This act is to become effective on its passage and approval.

Approved: March 8, 1973.

CHAPTER NO. 215

An Act to Amend Section 23-3013, R.C.M. 1947, By Extending the Time In Which the Registrar Must Make A Survey; and Extending the Number of Elections Before A Voter's Registration Card Is Canceled.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 23-3013, R.C.M. 1947, is amended to read as follows:

"23-3013. **Cancellation of registry for failure to vote—reregistration—cancellation of registry of elector in United States service.** (1) Except as provided in subsection (3) of this section, *within sixty (60) days* after every general election *in* which a president is elected, the registrar shall:

(a) Compare the electors who have voted in each precinct, as shown by the official pollbooks, with the official register of each precinct;

(b) Remove the registry cards of all electors who *have* failed to vote, mark each card "canceled," and place canceled cards for the entire county in alphabetical order in the "canceled file";

(c) Notify each elector in writing before the thirty-first day after cancellation by sending notice to his post-office address as shown on the election records.

(2) An elector whose card is removed and canceled may register in the same manner as his original registration was made.

(3) The registration of an elector who actually votes by absentee ballot shall not be cancelled if his ballot is received and

rejected by the registrar within ten (10) days succeeding the election."

Approved: March 8, 1973.

CHAPTER NO. 216

An Act Amending Section 23-3405, R.C.M. 1947, by Providing for the Elimination of the Requirement for Proxies in County Conventions of Political Parties.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 23-3405, R.C.M. 1947, is amended to read as follows:

"23-3405. **Organization of committee — meeting — county convention to elect delegates and alternates to state convention.** (1) The committee shall meet prior to the state convention of its political party and organize by electing a chairman and one (1) or more vice-chairmen. The chairman or first-vice-chairman shall be a woman. They shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct committeemen.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise any and all powers conferred upon the county, city, state, and congressional central committees by this act.

(3) The chairman of the county central committee shall call the central committee meeting and not less than four (4) days before the date of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct committeeman. *If party rules permit the use of a proxy, no* proxy shall be recognized unless held by an elector of the precinct of the committeeman executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committeeman *is* absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The

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chairman and secretary of the county convention shall issue and sign certificates of election of the delegates."

Approved: March 8, 1973.

CHAPTER NO. 217

An Act to Amend Section 91-3108, R.C.M. 1947, to Include Coal as a Mineral which an Executor, Administrator or Guardian can Lease for Ten (10) Years and Thereafter.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 91-3108, R.C.M. 1947, is amended to read as follows:

"91-3108. **Leasing — procedure to procure order — provisions and terms—execution—effect.** To obtain an order to lease the realty, the proceedings to be taken and the effect thereof shall be as follows:

1. The executor, administrator, or any person interested in the estate, may file a verified petition showing: The advantage or advantages that may accrue to the estate from giving a lease; a general description of the property proposed to be leased; the term, rental, and general conditions of the proposed lease; and the names of the legatees and devisees, if any, and of the heirs of the deceased, so far as known to the petitioner.

2. Upon filing such petition an order must be made by the court or judge, requiring all persons interested in the estate to appear before the court or judge, at a time and place specified, not less than two nor more than four weeks thereafter, then and there to show cause why the realty (briefly indicating it) should not be leased for the period (stating it), at the rental mentioned in the petition (stating it), and referring to the petition on file for further particulars.

3. The order to show cause must be personally served on the persons residing in the county interested in the estate, at least ten days before the time appointed for hearing the petition, or be published for two successive weeks in a newspaper of general circulation published in the county.

4. At the time and place appointed in the order to show cause, or such other time and place to which the hearing may be postponed, the court or judge having first received satisfactory proof of personal service or publication of the order to show cause, must procede to hear the petition, and any objections that

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may be filed or presented thereto. Upon such hearing, witnesses may be compelled to attend and testify in the same manner and with like effect as in other cases, and the court or judge may, in its or his discretion, appoint one or more, not exceeding three, disinterested persons to appraise the rental value of the premises, and direct that a reasonable compensation for their services, not to exceed five dollars per day, be paid by the estate. If, after a full hearing, the court or judge is satisfied that it will be for the advantage of the estate to lease the whole or any portion of the real estate, an order must be made authorizing, empowering and directing the executor or administrator to make such lease. The order may prescribe the minimum rental to be received for the premises, and the period of the lease, which must in no case be longer than for ten years, except that a lease or contract providing for the exploration of the premises for oil, gas, *coal* or hydrocarbons may provide for a term of ten years and for as long thereafter as oil, gas, *coal,* or hydrocarbons shall be produced in commercial quantities, and may prescribe the other terms and conditions of such lease.

5. After making of the order to lease, the executor or administrator must execute, acknowledge, and deliver a lease of the premises, for the rent, and period, and with the conditions specified in the order, such lease before it shall become effective shall be approved by the court or judge thereof before delivery, setting forth in the lease that it is made by authority of the order, and giving the date of such order. A certified copy of the order shall be recorded in the office of the county clerk of every county in which the leased land, or any portion thereof, lies.

6. Every lease so made shall be effectual to demise and let, at the rent, for the term, and upon the conditions prescribed therein, the premises described therein. Jurisdiction of the court to administer the decedent's estate shall be effectual to vest such court and judge with jurisdiction to make the order for the lease, and such jurisdiction shall conclusively inure to the benefit of the lessee, his heirs and assigns. No omission, error, or irregularity in the proceedings impairs or invalidates the same, or the lease made in pursuance thereof."

Approved: March 8, 1973.

CHAPTER NO. 218

An Act to Amend Section 75-6323, R.C.M. 1947, Providing for the Audit of School District Extracurricular Funds by the State Examiner.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-6323, R.C.M. 1947, is amended to read as follows:

"75-6323. **Extracurricular fund for pupil functions.** The government of the pupils of the school within a district or the administration of a school on behalf of the pupils may establish an extracurricular fund for the purposes of the receipts and expenditures of money collected for pupil extracurricular functions with the approval of the trustees of the district. All extracurricular moneys of any pupil organization of the school shall be deposited and expended by check from a bank account maintained for the extracurricular fund.

An accounting system for the extracurricular fund recommended by the state examiner shall be implemented by the trustees. Such accounting system shall provide for:

(1) the internal control of the cash receipts and expenditures of the money; and

(2) a general account that can be reconciled with the bank account for the extracurricular fund and reconciled with the detailed accounts within the extracurricular fund maintained for each student function.

The trustees of the district shall cause an annual audit of the extracurricular fund by retaining the state examiner to perform such audit. A fee of eighty dollars ($80) per day per man shall be paid from the extracurricular fund or district moneys to the state examiner for deposit in the state treasury to the credit of the general fund.

The auditor shall file a certified copy of the audit report with the county superintendent. The county superintendent shall publish notice in a newspaper of the district or county of the filing and the fact that it is open to public inspection."

Approved: March 8, 1973.

CHAPTER NO. 219

An Act to Amend Section 31-142, R.C.M. 1947, Permitting Driver's License Cancellation for Cause.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 31-142, R.C.M. 1947, is amended to read as follows:

"31-142. **Authority of board to cancel licenses.** (a) The board is hereby authorized to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance thereof hereunder *or that since the issuance thereof said licensee has become ineligible, such ineligibility shall be determined pursuant to the provisions of section 31-127,* or that said licensee failed to give the required or correct information in his application or committed any fraud in making such application.

(b) Upon such cancellation, the licensee must surrender the license so canceled to the board."

Approved: March 8, 1973.

CHAPTER NO. 220

An Act Providing for the Conservation of Strippable and Marketable Coal, and Prohibiting the Waste Thereof; Providing for the Submission of Strip Mining Plans, to the Department of State Lands; Assigning Duties to the State Board of Land Commissioners; Providing Penalties; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act shall be known and may be cited as "The Strip Mined Coal Conservation Act."

Section 2. (1) Recognizing the importance of natural resources to the welfare of present and future generations of the people of Montana, it is declared to be the public policy in providing for the orderly development of coal resources through strip mining to assure the wise use and to prevent the waste of coal.

(2) It is the purpose of this act:

(a) to vest in the department the authority to review strip mining plans and either approve or disapprove such plans for the purpose of preventing waste; and

(b) to vest in the board the authority to adopt rules to prohibit waste resulting from strip mining operations.

Section 3. Unless the context requires otherwise, in this act:

(1) "Board" means the state board of land commissioners.

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(2) "Department" means the department of state lands.

(3) "Strip mining" means all or any part of the process followed in the production of coal by the open cut method including mining by the auger method or any similar method which penetrates a coal deposit and removes coal directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the coal.

(4) "Overburden" means all of the earth and other materials which lie above a natural coal deposit and also means such earth and other materials after removal from their natural state in the process of strip mining.

(5) "Strippable coal" means that coal which can be removed through strip mining methods adaptable to the location that coal is being strip mined or is planned to be strip mined.

(6) "Marketable coal" means strippable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(7) "Waste" means the nonremoval or nonutilization of strippable and marketable coal by an operation, provided that the nonremoval or nonutilization of strippable and marketable coal in accordance with reclamation standards established by the department shall not be considered waste.

(8) "Person" means a person, partnership, corporation, association or other legal entity.

(9) "Operation" means any person engaged in strip mining who removes more than ten thousand (10,000) cubic yards of coal or overburden.

(10) "Operator" means a person that conducts an operation.

(11) "Strip mining plan" means the planned course of conduct of a strip mining operation to include plans for the removal and utilization of strippable and marketable coal located within the area planned to be mined.

Section 4. (1) No operator may engage in strip mining without having first obtained approval of a strip mining plan from the department as provided for in section 5.

(2) Approved strip mining plans shall be effective for two (2) years from the date of commencing the operation or one (1) year from the date the plan is approved, whichever occurs first.

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Section 5. (1) Upon submission of a strip mining plan to the department, the department shall review the plan for the purpose of determining whether waste will occur. The department may require an operator to submit any information it deems necessary for review of the strip mining plan to determine whether waste will occur and may make inspections and investigations it deems necessary for the review. The department shall either approve or disapprove a strip mining plan within six (6) months of its receipt from the operator. In the event a strip mining plan is disapproved, the department shall recommend the means to bring the plan into conformance with this act. Any strip mining plan not approved or disapproved by the department within six (6) months of its receipt will be deemed approved for the purposes of this act.

(2) The department shall adopt procedures for the submission of strip mining plans and prescribe the format for the preparation of strip mining plans.

(3) Upon request by the operator for good cause shown, the department may modify the terms and conditions of an approved strip mining plan at any time during the course of an operation.

Section 6. (1) If a strip mining plan is disapproved, the operator or his authorized representative may appeal to the board. Within thirty (30) days of receiving a request for a hearing, the board must hold a hearing. For good cause shown, the hearing may be held not more than sixty (60) days after receipt by the board of the request. The decision of the department with regard to the strip mining plan shall remain in effect not more than five (5) working days after the hearing unless the decision is sooner affirmed, modified or revoked by the board. The board may require an operator to submit any information it deems necessary for the hearing and may make inspections and investigations it deems necessary for the hearing.

(2) The board may adopt rules to prevent the waste of coal resulting from strip mining operations and to otherwise effectuate the purposes and intent of this act.

Section 7. (1) Any operator who engages in a operation without an approved strip mining plan as provided for in this act shall be liable to a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), and an additional civil penalty of not less than one hundred dollars ($100) nor more than one thousand ($1,000) for each day during which the violation continues. Such penalties shall be recoverable in an action brought in the name of the state by the attorney

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general in the district of the first judicial district of the state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) Any operator that fails to comply with the terms of an approved strip mining plan shall be liable to a civil penalty of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000). Upon conviction the court may revoke the strip mining plan. In the event of revocation of the strip mining plan, the operator must proceed as provided for in section 5. The penalties provided for in subsection (1) of this section shall apply to revoked strip mining plans.

(3) Any person or operator who violates a rule adopted by the board pursuant to this act is guilty of a misdemeanor.

Section 8. All hearings and appeal procedures shall be in accordance with sections 82-4209 through 82-4217.

Section 9. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. All fines collected under the provisions of this act shall be deposited in the general fund.

Section 11. This act is effective on its passage and approval except that for operation in effect upon the date of the passage and approval of this act, the provisions of section 4 shall not apply to such operations for one (1) year from the effective date of this act.

Approved: March 8, 1973.

CHAPTER NO. 221

An Act Allowing All Agencies of State Government to Give Assistance to Tribal Councils or Their Official Designees Assistance on Any Matter Relating to Coal Development on Indian Lands, and Providing for Recovery of Costs Thereof.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. All executive and legislative agencies of the state government may within the area of their expertise and authority provide assistance to tribal councils or their offical designees re-

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questing such assistance on any matter relating to coal development on Indian reservation lands, and may make an appropriate charge therefor.

Approved: March 8, 1973.

CHAPTER NO. 222

An Act to Provide for the Voluntary Payment of Personal Injury or Property Damage Claims Without Such Payment Constituting an Admission of Liability.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The legislative assembly hereby declares that the health, welfare and safety of the people of the state of Montana would be enhanced by the expeditious handling of liability claims. The legislative assembly further declares that the handling of such claims would be expedited if voluntary payment by or on behalf of one person to or on behalf of a person who has sustained injury to his person or damage to his propery could not be construed as an admission of fault or liability as to any claim arising out of the occurrence which gave rise to such injury or damage.

Section 2. As used in this act, the word "person" includes any individual, partnership, joint venture, unincorporated association, private or municipal corporation, the state and its political subdivisions.

Section 3. No voluntary partial payment of a claim against any person based on alleged liability of that person for injury to person, including death, or damage to property arising out of any occurrence shall be construed as an admission of fault or liability, or as a waiver or release of claim by the person to whom or in whose behalf such payment was made. No voluntary partial payment shall be construed to reduce the amount of damages which may be pleaded or proved in any action arising out of such occurrence. The fact of any such voluntary payment, or its amount, shall not be admissible as evidence on the trial of any action arising out of such occurrence, whether on the issue of liability, the extent of the damage or otherwise. Upon final settlement between the parties of a claim arising out of such occurrence, the parties may make any agreement they wish with respect to all voluntary partial payments. After entry of a judgment in an action for damages for personal injuries, including death, or for damage to property arising out of any occurrence, any voluntary partial payment theretofore made shall be treated as a credit against

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such judgment, and shall be deductable from the amount of such judgment. If after partial voluntary payments are made as herein provided for, it shall be determined by a court of competent jurisdiction that the person who made such payments, or on whose behalf such payments were made, is liable for an amount which is less than the amount of the voluntary payments already made, such person shall have no right of action for the recovery of the amount by which the voluntary payments exceeded the amount of the judgment.

Section 4. It is the intent of the legislative assembly that each part of this act is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Approved: March 8, 1973.

CHAPTER NO. 223

An Act to Remove Requirements of Residency and Minority in Probate of Estates of Net Value Less Than Ten Thousand Dollars ($10,000); and Amending Sections 91-5301, 91-5304, 53-5305, 91-5308 and 91-5310, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 91-5301, R.C.M. 1947, is amended to read as follows:

"91-5301. **Estate may be set aside to surviving spouse or child —net value of estate must be less than ten thousand dollars.** If a decedent leaves a surviving spouse or child or children, and the net value of the whole estate, over and above all liens and encumbrances at the date of death and over and above the value of any homestead interest set apart out of decedent's estate under chapter 25, Title 91, R.C.M. 1947, does not exceed the sum of ten thousand dollars ($10,000), the same may be set aside to the surviving spouse, if there be one, and if there be none, then to the child or children of the decedent."

Section 2. Section 91-5304, R.C.M. 1947, is amended to read as follows:

"91-5304. **Petition to set aside estate—requirements.** Allegations showing that this act is applicable together with a prayer that the estate be set aside as provided in this act may be included alternately in the petition for probate of the will, or for letters

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of administration; or such allegations and prayer may be presented by separate petition filed by the personal representative of the decedent, or the surviving spouse, or the child or children, filed at any time before the hearing on the petition for the probate of the will or for letters of administration or after the filing of the inventory. In all cases the petition must be verified; and the allegation shall include a specific description and an estimate of the value of all of the decedent's property, a list of all liens and encumbrances at the date of death, and a designation of any property as to which a homestead is or may be set aside."

Section 3. Section 91-5305, R.C.M. 1947, is amended to read as follows:

"91-5305. **Notice—contents.** If the allegations and prayer as provided in the preceding section are included in the petition for probate of the will or for letters of administration, the notice of hearing shall include a statement that a prayer for setting asire the estate to the surviving spouse or the child or children as the case may be, is included in the petition."

Section 4. Section 91-5308, R.C.M. 1947, is amended to read as follows:

"91-5308. **Court decree—conditions—assignment to surviving spouse or child—title vested—subject to encumbrances—exemptions limiting assignment.** If upon the hearing of any petition provided for by this act, the court finds that the net value of the estate of the decedent, determined as provided in this act, does not exceed the sum of ten thousand dollars ($10,000), as of the date of death of the decedent, and that the expenses of the last illness, funeral and burial charges and expenses of administration and all other creditors have been paid, it shall, by decree for that purpose, assign such estate to the surviving spouse; if there be no such surviving spouse, at the time of such decree, then to *the* child or children *of the decedent*; all subject to whatever mortgages, liens or encumbrances upon such estate there may be at the time of the death of the decedent. The title to such estate so assigned or set aside shall vest absolutely in the person or persons named in the decree, subject to mortgages, liens or encumbrances as here provided, and there must be no further proceedings in the administration, unless further estate be discovered. But no surviving spouse or child shall be entitled to such an assignment where the net value of the whole estate transferring to them from the decedent including the value of decedent's interest in any joint property owned by the decedent at the time of his death, and the value of any property transferred by the decedent in contemplation of decedent's death,

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exceeds, as to such spouse, or such child, respectively, the exemptions provided for them in section 91-4414, R.C.M. 1947."

Section 5. Section 91-5310, R.C.M. 1947, is amended to read as follows:

"91-5310. **When estate shall be administered in the usual manner.** If the court finds that the net value of the estate determined as provided in this act exceeds the sum of ten thousand dollars ($10,000) or that the surviving spouse, or child or children, are not entitled to an assignment under this act, or that there is neither a surviving spouse or surviving child of the decedent, the petition to set aside property of the decedent shall be denied, and the estate shall be then administered in the usual manner."

Approved: March 8, 1973.

CHAPTER NO. 224

An Act Providing that Compensation for Legislators when Engaged in Official Business During an Interim Period is Computed in Quarters of Days.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Salary compensation paid to members of the legislature for performance of their official duties when the legislature is not in session shall be computed in the same manner as per diem is computed under section 59-539.

Approved: March 8, 1973.

CHAPTER NO. 225

An Act Abolishing the Occupation Health Advisory Committee.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The occupation health advisory committee, created in section 69-4210, R.C.M. 1947, is abolished.

Approved: March 8, 1973.

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CHAPTER NO. 226

An Act to Amend Section 75-7709, R.C.M. 1947, Providing for an Alternative Source for Funding Construction of Vocational-Technical Centers.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7709, R.C.M. 1947, is amended to read as follows:

"75-7709. **Sources of financing for post-secondary vocational-technical center budgets and board of** *public* **education administration.** The total of the budgets approved by the board of *public* education together with the cost of state administration of the post-secondary vocational-technical centers shall constitute the total maximum approved, state-wide budget which shall be financed as follows:

(1) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing post-secondary vocational-technical education in Montana.

(2) The board of county commissioners of each county in which a designated post-secondary vocational-technical center is located is hereby authorized to levy a tax of not to exceed one (1) mill on the dollar of all taxable property, real and personal, within the county for the support and maintenance of the post-secondary vocational-technical center located within the said county.

(3) Designated post-secondary vocational-technical centers shall be eligible to receive such funds from the federal government as the board of *public* education may provide pursuant to applicable Acts of Congress.

(4) The board of trustees of any designated high school district, or county high school district where a post-secondary vocational center is located may be required, as a condition for the construction in such district of a post-secondary vocational center, or any part thereof, to furnish up to fifty percent (50%) of the amount of funds required for any such construction. The percentage of construction funds to be furnished by such designated district shall be derived, in whole or in part, from any of the following sources:

(a) The sale of bonds issued by such district. Such bonds shall be issued in conformity with the requirements of chapter 71 of title 75 in the case of high school and county high school district.

(b) Any other funds available to such district which may be legally and properly applied toward such construction.

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(c) The reasonable value of land, buildings, fixtures or equipment furnished by such district, subject to the approval of the board of public education.

(5) If the aggregate financing provided by sources of revenue *in (1), (2) and (3)* does not provide one hundred per cent (100%) financing of the maximum approved, state-wide budget, the remaining deficiency shall be financed from any state funds appropriated by the legislature for post-secondary vocational-technical education.

The board of *public* education shall direct the distribution of the funds specified in subsections (1), (3), *and (5)* of this section on the basis of the budgets approved by the board of *public* education. The funds earned by the mill levy specified in subsection (2) of this section shall be credited by the county treasurer to the post-secondary vocational-technical center fund.

The board of *public* education shall determine the amount of financing available from these *five* sources of revenue and may approve budgets for maintenance and operation, construction and ancillary services. The aggregate amount of the budgets so approved by the board of *public* education for post-secondary vocational-technical centers shall not exceed the moneys determined to be available."

Approved: March 8, 1973.

CHAPTER NO. 227

An Act Providing For Infant Screening; Providing the Department of Health and Environmental Sciences Require Tests For Newborn Infants; Providing For Administration of the Act; Regulations; Requiring the Availability of, and if Requested, Furnishing of Assistance and Services of the Department of Health and Environmental Sciences and the Boulder River School and Hospital if Tests are Reported Positive; and Repealing Section 69-4116, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. As used in this act: (1) "Department" means the department of health and environmental sciences.

(2) "Person" means any individual, firm, partnership, association, corporation, or any other entity whether organized for profit or not.

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(3) "Newborn" means any infant under twenty-eight (28) days of life.

Section 2. (1) A person in charge of a facility wherein a child is born or wherein a newborn infant is cared for, or a person responsible for the registration of birth of an infant, shall ensure each infant is administered tests designed to detect inborn metabolic errors as shall be required to be administered under rules adopted by the department.

(2) The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department.

Section 3. This act shall be administered by the department, and the department may adopt rules for the administration of this act.

Section 4. (1) The department and the staff of the Boulder river school and hospital shall make available and furnish, when requested, any assistance and services permitted by law to achieve the legislative intent of this act.

(2) The department may determine its procedure for advising the attending physician, the parents or legal guardian of the newborn infant of any medical results of the test, and the availability of assistance, services or counseling of the department and the staff of the Boulder river school and hospital. The department may determine procedures for coordination with the Boulder river school and hospital in providing the services and assistance required in this act.

Section 5. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Section 69-4116, R.C.M. 1947, is repealed.

Approved: March 8, 1973.

CHAPTER NO. 228

An Act Providing for a Standard Serological Test for Women Seeking Prenatal Care; Providing for Definitions; Laboratory Testing, Certificate Form, Duties of Physicians and other Persons Required to Take Sample; Disclosure of Report, Confi-

dentiality of Report, Report to Department of Health of Positive Reports of Tests, Use of Information by Department, When, Report of Birth to State if Test Made; Exemption from Provisions of Act; and Repealing Sections 69-4612, 69-4613, 69-4614 and 69-4615, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. (1) "Department" means department of health and environmental sciences.

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, approved by the department.

Section 2. Every female, regardless of age or marital status, seeking prenatal care from a physician, is required to submit blood specimen for the purpose of a standard serological test. In submitting the specimen to the laboratory, the physician shall designate it as a prenatal test.

(1) A physician or other person authorized by law to practice obstetrics who attends a pregnant woman shall at the first professional visit take the blood sample and submit it to a laboratory.

(2) A person permitted to attend a pregnant woman, but not permitted to take blood samples shall have the sample taken by a person permitted to take blood samples and submit it to a laboratory.

(3) Any physician or other person required to take the blood sample who violates this act is guilty of a misdemenaor. However, a person who requests a sample of blood in accordance with this provision, and whose request is refused, is not guilty of a violation of this section.

Section 3. The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department. Any other state, United States health service or United States armed forces laboratory shall be approved for the purpose of this act. The laboratory test may be made on request at the laboratory of the department. A reasonable fee for the test may be established by the department.

(1) Reasonable rules for reports to be submitted by any laboratory making tests, and the manner of furnishing the reports to the physician and the state shall be adopted by the department.

(2) All positive laboratory tests for any venereal diseases shall be reported to the department by the laboratory preparing

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the test. The department shall prescribe the form and way of reporting.

(3) The department may use information derived from reports of positive tests for venereal diseases for follow-up procedures required by law or considered necessary by the department for the protection of public health.

Section 4. The "certificate form" to be provided the physician recording the results of the test made by the laboratory shall be the same form as that provided with respect to premarital standard serological test in section 48-135.

Section 5. The report of the results of the test so certified by the laboratory shall be exhibited by the physician to the patient. Upon request of the patient, the report of the results of the test may be exhibited to the spouse of the patient, or, if the patient is a minor, report of the results of the test may be exhibited to the minor's parents or to the minor's legal guardian.

Section 6. Certificates, laboratory statements or reports, or any other matters in this act referred to, and the information therein contained, shall be confidential and may not be divulged to or open to inspection by any person other than the patient or those designated by the patient to receive the information, or other than state and local health officers or their duly authorized representatives. A person who divulges this information or opens to inspection the certificates, statements, or reports, without authority, to any person not by law entitled to them, is guilty of a misdemeanor and may be fined not more than one hundred dollars ($100).

Section 7. The department shall provide all necessary printing and pay all necessary expenses relative to administration of the act.

Section 8. The district court within the county wherein any person affected by this act resides may waive the requirements of this act as to the person if the judge is satisfied, by affidavit or other proof, that the tests required by the act are contrary to the tenets or practices of the religious creed of which the applicant is an adherent, and that the public health and welfare will not be injuriously affected thereby.

Section 9. A birth or fetal death certificate shall state whether a standard serological test was made on the specimen of blood, but the birth or fetal death certificate may not show the result of the test. The certificate shall state the approximate date

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when the specimen was taken, and if no test was made, the reason shall be stated.

Section 10. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are serverable from the invalid applications.

Section 11. Sections 69-4612, 69-4613, 69-4614 and 69-4615, R.C.M. 1947, are repealed.

Approved: March 8, 1973.

CHAPTER NO. 229

An Act Amending Section 28-602, R.C.M. 1947, to Provide that a Rural Fire Control Chief May be a Regular County Officer, or Other Person; Amending section 28-604, R.C.M. 1947, to Make Clear that Fire Companies and Fire Districts in Unincorporated Areas are Excluded; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 28-602, R.C.M. 1947, is amended to read as follows:

"28-602. **Function of the board.** The functions of the respective boards of county commissioners with respect to rural fire control shall be to carry out the specific authorities and duties hereinafter imposed.

(1) To provide for the organization of volunteer rural fire control crews.

(2) To appoint a county rural fire chief and such district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as they may deem necessary. The county rural fire chief *may* be a regular county officer *or other person*, who in the opinion of the board is the best qualified to perform the duties and who shall serve without additional compensation for the duties hereby imposed. All district fire chiefs shall serve without compensation;

(3) Boards of county commissioners, acting pursuant to this act, may co-operate with federal, state and other fire protection agencies, including boards of county commissioners or adjoining

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counties in providing means and methods of safeguarding the range, farm and forest lands within the state and in preventing fire nuisance thereon."

Section 2. Section 28-604, R.C.M. 1947, is amended to read as follows:

"28-604. **Lands to which applicable.** The provisions of this act are not applicable to any organized forest protection district or fire district defined in sections 28-101 to 28-129, *or sections 11-2003 through 11-2010,* or any organized fire protection district organized and operating under other legal authority. This act shall apply to all lands not protected by federal, state, municipal or private protective agencies organized under the laws of the state of Montana."

Section 3. This act is effective on its passage and approval.

Approved: March 8, 1973.

CHAPTER NO. 230

An Act to Transfer Certain Funds from the Public Employees' Retirement System Account in the Agency Fund to the State Game Wardens' Retirement Account in the Agency Fund.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. One hundred twenty nine thousand sixty-nine dollars ($129,069) is here by transferred from the public employees' retirement system account in the agency fund to the state game wardens' retirement account in the agency fund.

Approved: March 8, 1973.

CHAPTER NO. 231

An Act to Amend Section 8-131, R.C.M. 1947, to Provide That Affidavits or Other Evidence as the Commission May Determine Must Accompany Applications For Temporary Authority to Specify in Detail Reasons For Supporting the Application For Temporary Authority and the Term Within Which the Temporary Authority Would Be Required; and Providing An Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

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Section 1. Section 8-131, R.C.M. 1947, is amended to read as follows:

"8-131. **Temporary authority for service—duration—extension.** To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the *public service commission* may, in its discretion, upon affidavits or such other evidence as it may deem sufficient, and without hearings or other proceedings, grant temporary authority for such service by a common carrier by motor vehicle or a contract carrier by motor vehicle, as the case may be. *Such affidavits or other evidence as the board may determine must accompany the application for temporary authority. The affidavits or other evidence must specify in detail the reason for supporting the application for temporary authority and the term within which the temporary authority would be required.* Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the board shall specify, but for not more than ninety (90) days. Temporary authority initially granted pursuant to the provisions hereof may be extended by the board without hearings or other proceedings, but in no case shall a grant of temporary authority, with extensions, exceed an aggregate of one hundred twenty (120) days. Neither the granting of temporary authority nor operation thereunder shall create any presumption that corresponding permanent authority will be granted thereafter. Transportation service rendered under such temporary authority shall be subject to all applicable provisions of the Motor Carrier Act and to the rules, regulations and requirements of the board thereunder."

Section 2. This act is effective on its passage and approval.

Approved: March 8, 1973.

CHAPTER NO. 232

An Act Amending Section 8-118, R.C.M. 1947; Requiring Every Motor Carrier to File with the Public Service Commission a Report on or Prior to the Thirty-first Day of March of Each Year; and Providing for an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 8-118, R.C.M. 1947, is amended to read as follows:

"8-118. **Records of motor carriers to be open for inspection by board—system of accounts to be prescribed—reports required.**

All records, books, accounts and files of every class A and class B motor carrier in this state, so far as the same shall relate to the business of transportation conducted by such motor carrier, shall at all times be subject to examination by the board or by any authorized agent or employee of the board. The board shall prescribe a uniform system of accounts and uniform reports covering the operations of such class A and class B motor carriers and every motor carrier authorized to operate as such in accordance with the provisions of this act shall keep its records, books, and accounts according to such uniform system, in so far as possible. On or before the *thirty-first* day of *March* of each year, every motor carrier authorized to engage in such business shall file with the board a report, under oath. In addition to such annual reports every motor carrier shall prepare and file with the board, at the time or times and in the form to be prescribed by the board, annual reports, special reports and statements giving to the board such information as it shall require in order to perform its duties under this act."

Section 2. This act is effective on its passage and approval.

Approved: March 8, 1973.

CHAPTER NO. 233

An Act to Amend Section 8-101.2, R.C.M. 1947, Exempting from the Motor Carrier Act Any Commercial Transportation Movement of Livestock in any Motor Vehicle Having a Cargo Bed of Twenty-two (22) Feet in Lengths or Less.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 8-101.2, R.C.M. 1947, is amended to read as follows:

"8-101.2. **Certificates required for commercial transportation of livestock.** No person, firm, corporation, association or its or their officers, agents, employees, or servants, shall operate any motor vehicle or combination of vehicles in the commercial transportation of livestock for hire, without having first obtained a class B certificate of public convenience and necessity from the board. *Provided, however, any commercial transportation movement of livestock in any motor vehicle having a cargo bed of twenty-two (22) feet in length or less, shall be deemed exempt from the provisions of this act.* Provided, however, if any such person, firm, corporation, association or its or their officers, agents, employees, or servants, or its or their legal predecessor in interest, was in bona

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fide operation as a motor carrier, transporting livestock commercially, on July 1, 1970, over the territory for which application is made and has so operated since that time, or, if engaged in a seasonal service, was in bona fide operation during the season ordinarily covered during the year 1970, and has so operated since that time, upon such proof thereof as may be required by the board, the board shall issue a class B certificate of public convenience and necessity authorizing commercial transportation of livestock throughout the state without a hearing therefor, if application for such certificate is made to the board as provided in section 8-109 of this code, within one hundred eighty (180) days after July 1, 1971. Otherwise, the application for a certificate shall be granted or denied by the board as provided for in section 8-111 of this code. Nothing herein provided shall relieve the holder of a class B certificate authorizing the commercial transportation for hire of livestock as provided for herein from any obligation, duty, fee or other requirement of the Motor Carrier Act."

Approved: March 8, 1973.

CHAPTER NO. 234

An Act to Amend Section 41-1304, R.C.M. 1947, By Increasing the Statute of Limitations for an Employee to Recover Penalties from Six (6) Months to Eighteen (18) Months for Violations of the Payment of Wages Provisions in Chapter 13, Title 41, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 41-1304, R.C.M. 1947, is amended to read as follows:

"41-1304. **Period within which employee may recover penalties.** Any employee may recover all such penalties as are provided for the violation of section 41-1302, which have accrued to him, at any time within *eighteen (18) months* succeeding such default or delay in the payment of such wages."

Approved: March 8, 1973.

CHAPTER NO. 235

An Act to Amend Section 8-104.5, R.C.M. 1947, Providing that Upon the Filing of a Change or Revision of Any Rate, Fare,

Charge, Classification or Rule of Service by Filing Tariff Sheet or Sheets, Every Motor Carrier Upon Suspension by the Commission of the Tariff Sheet or Sheets Must Submit Prepared Testimony and Exhibits to Support Such Changes or Revisions; Providing that the Complaint of any Interested Party May be filed with the Board Within Twenty (20) Days, and After the Date of Filing Such Changes or Revisions; Providing that the Board May Suspend the Operation of Such Rate, Fare, Charge or Classification for a Period Not to Exceed One Hundred Eighty (180) Days; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 8-104.5, R.C.M. 1947, is amended to read as follows:

"8-104.5. **Changes, revisions of rate schedules, how made.** No motor carrier shall change or revise any rate, fare, charge, classification, or rule of service contained in its schedule without first obtaining approval therefor from the board. Such changes or revisions shall be made by filing with the board the tariff sheets containing such changes or revisions, plainly stating the change or changes, or revision or revisions, to be made; provided further, that the public shall be provided with such notice of the proposed changes or revisions as the board shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be deemed approved and effective thirty (30) days after the same are filed unless the proposed revisions or changes are suspended or disallowed by the board prior to the expiration of the thirty (30) day period; provided however, that the board may, for good cause, allow any change or revision to become effective on less than thirty (30) days after the filing thereof. *Upon filing thereof such changes or revisions, all tariff sheet or sheets, when suspended by the board, must be supported by such prepared testimony and exhibits from the motor carrier as will support such changes or revisions. The prepared testimony and exhibits must be filed with the commission thirty (30) days after the effective date of such suspension. Such testimony and exhibits may be supplemented prior to, or at the time of hearing, and supplemental exhibits may be filed after the close of the hearing at the direction or with permission of the commission.*

Upon its own initiative, or upon the complaint of any interested party filed with the board within *twenty (20)* days after the date upon which a change or revision of any rate, fare, charge or classification is filed with the board, the board may suspend the operation of such rate, fare, charge, or classification for a period not to

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exceed *one hundred eighty (180)* days, provided however that the order directing such suspension must be issued by the board not less than two (2) business days prior to the proposed effective date; and provided further, that the motor carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice *by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent,* and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a motor carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff. When the suspension of any proposed change or revision in a tariff is ordered by the board, it shall also order a public hearing to consider the reasonableness of the proposed change or revision; due notice shall be given for such hearing to all known interested or affected persons and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the board shall issue an order approving, denying, or modifying the proposed change or revision; provided however, that unless such hearing is held and such order is issued within *one hundred eighty (180)* days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed."

Section 2. This act is effective on its passage and approval.

Approved: March 8, 1973.

CHAPTER NO. 236

An Act Providing that the Suspension of any Intrastate Operating Authority as Provided in Section 8-107.1, R.C.M. 1947, for a Period of Twelve (12) Consecutive Months is a Prima Facie Presumption of Absense of Public Convenience and Necessity; Providing that if, After Notice and Hearing, the Carrier is Unable to Prove the Existence of Public Convenience and Necessity or Existing Demand for the Transportation Service, the Commission is Authorized to Cancel Such Certificate; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 8-107.2, R.C.M. 1947, which reads as follows:

8-107.2. The suspension of any intrastate operating authority of any carrier, as provided for in the preceding section, for a period of twelve (12) consecutive months shall be deemed to estab-

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lish a prima facie presumption of absense of public convenience and necessity. If, after notice and hearing, the carrier is unable to prove the existence of public convenience and necessity or existing demand for the transportation service, the commission is authorized to cancel such certificate of public convenience and necessity.

Section 2. This act is effective on its passage and approval.

Approved: March 8, 1973.

CHAPTER NO. 237

An Act to Amend Section 23-3318, R.C.M. 1947, Changing the Timing for the Filing of Certificates of Nomination.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 23-3318, R.C.M. 1947, is amended to read as follows:

"23-3318. **Certificates of nomination by individuals or parties not appearing on prior ballot—requisites—applicability.** Except as provided in subsection (6) of this section, nominations for public office by an individual or a political party which did not appear on the ballot in the next preceding *general* election may be made by executing a certificate of nomination.

(1) The certificate must be in writing and contain:

(a) The name of a candidate for the office to be filled;

(b) His residence, his occupation, and his business address.

(2) If a certificate is filed by a political party which did not appear on the ballot in the next preceding *general* election, it must contain the party name and in five (5) words or less the principle which such body represents.

(3) The certificate must be signed by electors residing within the state and district, or political division in which the officer or officers are to be elected. Each elector signing a certificate shall add to his signature his place of residence, and his business address.

(4) The number of signatures must be five per cent (5%) or more of the total vote cast for the successful candidate for the same office at the next preceding *general* election.

(5) *Except as provided in subsection (6), such certificates shall be filed on or before the filing deadline for the primary elec-*

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tion as established by law. Certificates of nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty (30) days and not less than fifteen (15) days previous to the day of election.

(6) A person who desires to run for president or vice-president as an independent candidate, must file a certificate of nomination with the secretary of state *90 days prior to the date of the general election.* The certificate must have the signatures of electors equal to five per cent (5%) or more of the legal votes cast for governor at the next preceding general election. He must also nominate the required number of electors allowable to Montana and certify the names to the secretary of state.

(7) This section shall not apply to nominations for special elections or to fill vacancies."

Approved: March 8, 1973.

CHAPTER NO. 238

An Act Requiring the Office of the Governor to Review the Executive Branch of State Government and Report to the Legislature.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 82-1315, R.C.M. 1947, which reads as follows:

82-1315. **Review of executive branch—report to legislature.** (1) The office of the governor shall continuously study, and evaluate the organizational structure, management practices, and functions of the executive branch and of each agency and the governor shall, by executive order or other means within the authority granted to him, take action to improve the manageability of the executive branch.

(2) The governor shall submit a report to each regular legislative session concerning the duties of his office under subsection (1) of this section and his recommendations, if any, for the transfer of functions between agencies, the elimination of unnecessary functions, or other recommendations to improve the manageability of the executive branch.

Section 2. This act shall expire after June 30, 1975.

Approved: March 9, 1973.

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CHAPTER NO. 239

An Act Providing For Legislative Review of Administrative Rules.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 82-4203.1, R.C.M. 1947, which reads as follows:

82-4203.1. **Legislative review of rules.** (1) The secretary of state shall, on the date the legislature convenes in regular session in 1974, transmit to both the senate and house of representatives one (1) copy of all rules in the Montana administrative code, not including superseded or repealed rules.

(2) The secretary of state shall, on the date the legislature convenes in each regular session after 1974, transmit to both the senate and house of representatives one (1) copy of all rules, which are in the Montana administrative code, adopted or amended by agencies since the convening of the previous regular session.

(3) The legislature may, by joint resolution, repeal rules transmitted to it. If a rule is repealed, the legislature shall, in the joint resolution, state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

Approved: March 9, 1973.

CHAPTER NO. 240

An Act Providing For All Businesses To Be Classified Similarly For Store License Fee Purposes; Raising Said License Fees Five Dollars ($5) and Crediting Said Increase For Administration of the Unfair Practices Act by the Department of Business Regulation; Amending Sections 84-2402, 84-2404, 84-2405, 84-2407, 84-2410, 84-2412, R.C.M. 1947; and Repealing Section 84-2406, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-2402, R.C.M. 1947, is amended to read as follows:

"84-2402. **Application and fee for license.** Any person, firm, corporation, association, copartnership or group desiring to open,

establish, operate or maintain a store in the state of Montana prior to September *1* of that calendar year shall apply to the state board of equalization for license to do so. The application shall be made upon a form which shall be prescribed and furnished by the state board of equalization, and shall set forth the name of the owner, manager, trustee, lessee, stockholders, receiver or other persons desiring said license; the name of such store; the location, including street number; and all such other facts as the state board of equalization may require.

If the applicant desires to open, establish, operate or maintain more than one such store, he shall make a separate application for a license to operate, maintain, open or establish each such store.

Each such application shall be accompanied by the license fee as prescribed in sections 84-2405 and 84-2407."

Section 2. Section 84-2404, R.C.M. 1947, is amended to read as follows:

"84-2404. **Expiration and renewal of licenses.** All licenses shall be so issued so as to expire December *31* of each calendar year. On or before December *31* of each calendar year, every firm, person, corporation, association, copartnership having a license, shall apply to the state board of equalization for a renewal license for the calendar year next ensuing. All applications for a renewal shall be made upon forms which shall be prescribed and furnished by the state board of equalization.

Each such application for a renewal license shall be accompanied by the license fee as prescribed in sections 84-2405 and 84-2407.

All licenses shall lapse on December *31* of the year for which the license was issued, and if, by December *31*, an application for a renewal license for the calendar year next ensuing has not been made, the fee charged shall be double the rate prescribed in sections 84-2405 and 84-2407."

Section 3. Section 84-2405, R.C.M. 1947, is amended to read as follows:

"84-2405. **Retailers subject to act—license fees for.** Every person, firm, corporation, association, copartnership or group opening, establishing, operating or maintaining one *(1)* or more retail stores or mercantile establishments, within this state, under the same general management, supervision or ownership, where a stock of goods is maintained during any portion of the year, regardless of whether *the* stock is held by ownership, consignment, agency

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or any other means, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating, or maintaining such stores or mercantile establishments, provided that the members of any group, association or consumer co-operative composed of independent units owning their own business and grouped or associated together by agreement or otherwise for the purpose of purchasing or selling merchandise or service for the mutual benefit of the members shall not be grouped for computing the license fee to be paid by *the* person, firm, corporation, association, or copartnership or retailer under this act, but *the* units or members shall be taxed as individual units.

The license fee herein prescribed shall be paid annually.

The annual license fees herein prescribed shall be as follows:

1. Upon one store the annual license fee shall be *eleven dollars ($11)*.

2. Upon the second store, the annual license fee shall be *fifty-six dollars ($56)*.

3. Upon the third store, the annual license fee shall be *one hundred and six dollars ($106)*.

4. Upon the fourth store, the annual license fee shall be *one hundred and fifty-six dollars ($156)*.

5. Upon the fifth store, and on each store in excess of five *(5)* stores, the annual license fee shall be *two hundred and six dollars ($206)*."

Section 4. Section 84-2407, R.C.M. 1947, is amended to read as follows:

"84-2407. **Wholesale store licenses.** Wholesale stores shall be taxed in all cases as individual units at the rate of *forty-three dollars and fifty cents ($43.50)* per unit, regardless of ownership; but, whenever goods, wares, and merchandise are sold regularly at both wholesale and retail from one establishment, the operator thereof shall pay the license fee required under section 84-2405 for the conduct of a retail store, in addition to the wholesale license herein provided for."

Section 5. Section 84-2410, R.C.M. 1947, is amended to read as follows:

"84-2410. **"Store" defined.** The term "store" as used in this act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, association, copartnership, or group, either domestic or

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foreign, in which goods, wares or merchandise of any kind are sold, either at retail or wholesale; and subject to the classification contained in sections 84-2405 and 84-2407. Vending machines shall not be considered as places of business per se and are not required to be licensed under the provisions of this act."

Section 6. Section 84-2412, R.C.M. 1947, is amended to read as follows:

"84-2412. **Employment of help—disposal of license money.** The state board of equalization is hereby authorized to employ such clerical and field assistance as may be found necessary to carry out and to administer the provisions of this act. All money collected under the provisions of this act shall be paid into the state treasury, *with five dollars ($5) of the fee collected from each store license sold credited to an earmarked revenue fund for administration of the Unfair Practices Act by the department of business regulation and the rest* to the credit of the general fund."

Section 7. Section 84-2406, R.C.M. 1947, is repealed.

Approved: March 9, 1973.

CHAPTER NO. 241

An Act Amending Sections 75-6809, 75-6810, 75-6811, 75-6812 and 75-6805, R.C.M. 1947, to Repeal the Requirement that the County Treasurer Maintain Duplicate Accounting Records for School Districts and to Allow School Districts the Option of Issuing Warrants in Single Copy or in Triplicate Copy.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-6809, R.C.M. 1947, is amended to read as follows:

"75-6809. **Entering appropriations on accounting records of county treasurer.** When the county treasurer receives the final budgets of the districts from the county superintendent, he shall open a fund for each budgeted fund included on the final budget of each district by entering the amount appropriated for *the fund* on his accounting record.

Whenever the county treasurer receives a final emergency budget for a district from the county superintendent, he shall increase the *amount* of the regularly adopted final budget by the amount of the emergency budgeted fund included on the final emergency budget."

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Section 2. Section 75-6810, R.C.M. 1947, is amended to read as follows:

"75-6810. **Procedure for issuance of warrants.** The trustees of each district shall issue all warrants and the warrants shall identify:

(1) the budgeted fund or nonbudgeted fund on which the warrant is drawn;

(2) the appropriation item of the budgeted fund or the type of expenditure for a nonbudgeted fund on which the warrant is drawn; and

(3) the warrant as an emergency warrant, if it is drawn on an emergency budget.

Any warrant issued by a district shall be countersigned by the chairman of the trustees and the clerk of the district before the warrant shall be negotiable. Facsimile signatures may be used in accordance with the provisions of chapter 13 of Title 59, R.C.M. 1947, provided that the facsimile signature device shall not be available to the other countersigner of the warrant.

The trustees shall issue warrants in single copy or in triplicate copy. When the warrants are issued in single copy, the trustees shall immediately provide a listing of the issued warrants on a fund-by-fund basis to the county treasurer and retain a copy of the listing in the district accounting records. When the warrants are issued in triplicate, the original copy of the warrant shall be delivered to the payee; the duplicate shall be sent immediately to the county treasurer and the triplicate shall be retained by the district for accounting record purposes. The duplicate and triplicate copies shall be identified on the face of the warrant as "Not Negotiable—Copy of Original."

However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period."

Section 3. Section 75-6811, R.C.M. 1947, is amended to read as follows:

"75-6811. **Recording and payment of warrants by county treasurer.** Immediately after receiving a duplicate warrant *or a warrant listing* from a district, the county treasurer shall enter the amount and number of such warrant on his accounting records under the fund identified on such warrant *or listing*. The recording

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of the warrants shall allow for the computation of the unexpended amount of a budgeted fund from the accounting records.

Whenever it appears to the county treasurer that a budgeted fund is so nearly exhausted that the issuance of another warrant will cause the overexpenditure of such *budget*, the county treasurer shall immediately notify the appropriate district of the expended condition of the *budget* and the district shall not issue another warrant against such *fund that would overexpend the budget.*

After receiving a duplicate warrant *or warrant listing that contains a warrant* which will exceed the unexpended balance of a budgeted fund, the county treasurer shall immediately notify the district of such overdraft. If the district has not corrected the overdraft before the presentation of the warrant for payment, the county treasurer shall refuse to pay or register such warrant, and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient *Budget*" and return the warrant to the person presenting it for payment.

Whenever a warrant will everexpend the cash balance of a nonbudgeted fund, the county treasurer shall refuse to pay or register such warrant, and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient Funds" and return the warrant to the person presenting it for payment. The county treasurer shall immediately notify the district of such refusal to pay or register the warrant drawn on a nonbudgeted fund."

Section 4. Section 75-6812, R.C.M. 1947, is amended to read as follows:

"75-6812. **Transfer among appropriation items of a fund.** Whenever it appears to the trustees of any district that the appropriated amount of any item of a budgeted fund of the final budget or the emergency budget is in excess of the amount actually required during the school fiscal year for such appropriation item, the trustees may transfer any or all of the excess appropriation amount to any other appropriation item of the same budgeted fund.

Such transfers shall not be made between different funds of the same district or between similar funds of different districts except as specifically provided by this title. The trustees shall *enter the authorized transfers upon the permanent records of the district.*"

Section 5. Section 75-6805, R.C.M. 1947, is amended to read as follows:

"75-6805. **Duties of county treasurer.** The county treasurer of each county shall:

(1) receive and hold all school moneys subject to apportionment, and keep a separate accounting of their apportionments to the several districts which are entitled to a portion of such moneys according to the apportionments ordered by the county superintendent. A separate accounting shall be maintained for each county fund supported by a county-wide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs,

(b) the basic special tax for high schools in support of the high school foundation programs,

(c) the county tax in support of the county's high school transportation obligation,

(d) the county tax in support of the high school obligations to the retirement systems of the state of Montana,

(e) any additional county tax required by law to provide for deficiency financing of the elementary foundation programs,

(f) any additional county tax required by law to provide for deficiency financing of the high school foundation programs,

(g) the county tax for a post-secondary vocational-technical center when levied by the board of county commissioners, and

(h) any other county tax for schools which may be authorized by law and levied by the county commissioners;

(2) whenever requested, notify the county superintendent of the amount of county school moneys on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school moneys subject to apportionment, and apportion such county and other school moneys to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures *for* each budgeted fund included on the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included on the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school moneys and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law, or by the dis-

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trict if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied;

(7) send all revenues received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of such revenues, no later than the fifteenth day of December of each year and every three (3) months thereafter until the end of the school fiscal year;

(8) register district warrants drawn on a budgeted fund in accordance with section 16-2604, R.C.M. 1947, when there are insufficient moneys available in such budgeted fund to make payment of such warrant. Redemption of registered warrants shall be made in accordance with sections 16-2605, 16-2602, and 16-2607, R.C.M. 1947;

(9) invest the moneys of any district as directed by the trustees of the district but in accordance with subsection (2) of section 16-2050 or subsection (8) of section 16-2618, R.C.M. 1947, whichever is applicable; and

(10) give to the trustees of each district, at least quarterly, an itemized report for each fund maintained by the district showing the paid warrants, outstanding warrants, registered warrants, amount and types of revenue received, and the cash balance."

Approved: March 9, 1973.

CHAPTER NO. 242

An Act to Amend Section 4-303, R.C.M. 1947, "Closing Hours for Licensed Retail Beer Establishments," by Deleting and Any Reference to Biennial General or Primary Elections.

Section 1. Section 4-303, R.C.M. 1947, is amended to read as follows:

"4-303. **Closing hours for licensed retail beer establishments.** Hereafter all licensed establishments wherein beer as defined by subsection (b) of section 4-302, is sold, offered for sale or given away at retail shall be closed during the following hours:

(a) Sunday from two A.M. to one P.M.;

(b) On any other day between two A.M. and eight A.M.; provided; however, that when any municipal incorporation has by ordinance further restricted the hours of sale of beer, then the

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sale of beer is prohibited within the limits of any such city or town during the time such sale is prohibited by this act and in addition thereto during the hours that it is prohibited by such ordinance."

Approved: March 9, 1973.

CHAPTER NO. 243

An Act to Amend Section 66-2904, R.C.M. 1947, to Provide that the Board of Massage Examiners Shall Convene After Each Appointment to the Board and Elect a President, Vice President, Secretary Treasurer; and to Provide for Regular Meeting.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-2904, R.C.M. 1947, is amended to read as follows:

"66-2904. **Organization of board—meetings—powers and duties.** The board shall convene after *each* appointment and elect a president, a vice-president, and a secretary-treasurer from their membership.

The board shall hold a regular meeting in each year, at the city of Helena, Montana, and shall hold special meetings at such times and places as the board, or a majority of the membership thereof, may designate; provided, that not more than four (4) meetings shall be held in any one (1) year. A majority of the board shall constitute a quorum.

The board shall have authority to administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. It shall adopt a seal, which shall be affixed to all licenses issued by them, and shall from time to time adopt such rules and regulations as they deem proper and necessary for the performance of their duties, and they shall adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this law, which shall be without prejudice, partiality, or discrimination as to the different schools of massage training. The secretary of said board shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.

A license to engage as a masseur within this state shall be issued to the individual members of said board at the first meeting of said board upon payment of the regular fee as provided for in this act."

Approved: March 9, 1973.

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CHAPTER NO. 244

An Act to Prohibit the Use of Weighing Devices in Trade or Commerce which are not Licensed by the Division of Business Regulations; Establishing License Fees; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 90-160.1, R.C.M. 1947, which reads as follows:

90-160.1. No person shall knowingly operate or use any unlicensed weighing devices in trade or commerce for ascertaining the weight of any commodity. Such license shall be obtained by making application to the department of business regulation upon such blank forms to be provided by the division of weights and measures, each license should include at least one (1) inspection per year. Every application shall be accompanied by the proper fee as established by this section.

WEIGHING DEVICES

Capacity	*Fees*
499 pounds or less	$ 2.50
500 pounds through 1999 pounds	4.00
2,000 pounds through 7,999 pounds	10.00
8,000 pounds through 40,000 pounds	20.00
40,001 pounds or more	35.00

The capacity of a weighing device shall be determined by the manufacturer's rated capacity.

All licenses shall be annual and shall expire on December 31.

Any person failing to pay the renewal license fee when due as required by this act shall forfeit the right to use the weighing device, and it shall be taken out of service by the division of weights and measures.

Section 2. This act shall be effective January 1, 1974.

Approved: March 9, 1973.

CHAPTER NO. 245

An Act to Amend Section 75-7008, R.C.M. 1947, to Allow the Tendering of an Individual Transportation Contract to a Parent or Guardian of a School District to Fulfill the Responsibility

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of the School District for Transportation; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7008, R.C.M. 1947, is amended to read as follows:

"75-7008. **Duty of trustees to provide transportation, types of transportation, and bus riding time limitation.** The trustees of any district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for any eligible transportee, the trustees must provide all eligible transportees of the district with transportation. The trustees shall furnish tranportation when directed to do so by the county transportation committee and such direction is upheld by the superintendent of public instruction. *The tendering of a contract to the parent or guardian whereby the district would pay the parent or guardian for individually transporting the pupil or pupils shall fulfill the district's obligation to furnish transportation for an elegible transportee.* The parent or guardian of an eligible transportee may, at his discretion, provide transportation or arrange for transportation for his child at his own expense to any district willing to accept his child.

The type of transportation provded by a district may be:

(1) by a school bus; or

(2) by such individual transportation as:

(a) paying the parent or guardian for individually transporting the pupil;

(b) paying board and room reimbursments;

(c) providing supervised correspondence study; or

(d) providing supervised home study

When the parent or guardian of an elementary pupil consents to a trip of over one (1) hour, the trustees may require such eligible transportee to ride a school bus for more than one (1) hour per trip."

Section 2. This is effective on its passage and approval.

Approved: March 9, 1973.

CHAPTER NO. 246

An Act Requiring the State Treasurer to Credit the State Highway Account in the Earmarked Revenue Fund with Moneys

Received Under the Act of Congress of February 25, 1920.

Be it enacted by the Legislative Assembly of the State of Montana.

Section 1. It shall be the duty of the state treasurer to pay one-half (½) of the moneys received from the treasurer of the United States as the state's share of gas and oil royalties under the Act of Congress of February 25, 1920, to the state highway account in the earmarked revenue fund.

Approved: March 9, 1973.

CHAPTER NO. 247

An Act to Amend Sections 46-801, 46-802, 46-803 and 46-804, R.C.M. 1947, Requiring Livestock Brand Inspection Before Change of Ownership of Six (6) or More Animals or Removal from County; and Providing a Lifetime Horse Transportation Permit to Owner.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 46-801, R.C.M. 1947, is amended to read as follows:

"46-801. **Inspection of livestock before change of ownership or removal from county.** (1) Except as in this act otherwise provided, it shall be unlawful to remove or cause to be removed from any county in this state any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly, by means of any railroad car, motor vehicle, trailer, horse-drawn vehicle, boat or in any manner whatsoever, or to transfer ownership by sale or otherwise *or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions* unless such animal shall have been inspected for brands by a state stock inspector or deputy state stock inspector and certificate of such inspection shall have been issued in connection with and for the purpose of such transportation or removal *or of such change of ownership* as in this act provided. Such inspection must be made in daylight *provided, however, that the change of ownership inspection requirements of this subsection shall not apply when such sale or change of ownership transaction involves five (5) or less such animals.*

(2) It shall be unlawful to sell or offer for sale at a livestock market any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly originating within any county in the state of Montana in which a livestock market is maintained, or transported un-

der a market consignment permit until such animal has been inspected for marks and brands by a state stock inspector, as in this act provided.

(3) It shall be unlawful to remove or cause to be removed any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly from the premises of any livestock market in this state unless such animal shall have been inspected for marks and brands by a state stock inspector and an inspection certificate for such animal shall have been issued in connection with and for the purpose of such removal from the premises of such livestock market, as in this act provided.

(4) The person in charge of any such cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly being removed from any county in this state, where inspection thereof is required by this act, or where change of ownership has occurred as in this act defined, or when moved under a market consignment permit shall have in his possession the certificate of inspection or market consignment permit issued in connection therewith, and shall exhibit the same to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector or deputy state stock inspector or at the request of either of them and the provisions of section 46-803 shall be extended to livestock transported or sold under the above-mentioned permits.

(5) *The following transportation permits may be issued:*

(a) In case of saddle, work or show horse or horses being transported from county to county within the state by the owner thereof for his personal use or business and where there is no change of ownership, the inspection certificate as required by this act, may be endorsed as to purpose and extent of transportation by the inspector issuing same in order to serve as a travel permit within the state for a period not to exceed one year for the horse or horses described thereon. Such permit becomes void upon any transfer of ownership or if such horse or horses are to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of saddle, work or show horse or horses may apply for a permanent transportation permit valid for both interstate and intrastate transportation of such horse or horses and until there is a change of ownership. To obtain such permit or permits such horses must have either a registered brand that has been legally cleared, or a lip tattoo, or the owner thereof must present positive proof of ownership to a state stock inspector. A written application, on forms to be provided by the department of livestock, must be completed by the owner and presented to a state

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stock inspector together with a five dollar ($5) fee for each horse. The application shall contain a thorough physical description of such horse or horses showing also all brands and tatoos carried by such horse or horses.

Upon approval of such application by a state stock inspector, a permanent transportation permit shall be issued by the department of livestock of the state of Montana to the owner for each horse and such permit shall be valid for the life of the horse unless there is a change of ownership in which even the permit shall automatically become void. The permit so issued must accompany the horse for which it was issued at all times while such horse is in transit. Such permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid in the state of Montana permanent transportation permits validly issued in other jurisdictions to the owner of saddle, work or show horses subsequently entering the state of Montana, provided that such permit shall be deemed automatically void upon a change of ownership.

(c) In case of registered purebred cattle being transported from county to county within the state by the owner thereof for show purposes and where there is no change of ownership, the inspection certificate as required by this act, may be endorsed as to purpose and extent of transportation by the inspector issuing same in order to serve as a travel permit within the state for a period not to exceed one year for the cattle described thereon. Such permit becomes void upon any transfer of ownership or if such cattle are to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(6) The provisions of *subsection (1)* shall not apply,

(a) to any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly being transported through the state in interstate commerce without leaving the custody of the carrier;

(b) to any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly transported by railroad consigned to and which, without leaving the custody of the carrier, does reach a market at which the livestock commission of the state of Montana regularly maintains a stock inspector, and for which animal a loading tally has been filed by the shipper with the carrier as provided in section 46-1008;

(c) to any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly when driven on the hoof and not moved by means of any motor vehicle, trailer, horse-drawn vehicle, railroad car or boat, by the owner from one (1) county to the next adjoin-

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ing county within the state of Montana on to land owned or controlled by the owner of livestock so moved for the purpose of pasturing, feeding or changing the range thereof;

(d) to any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly when driven on the hoof or moved by means of any motor vehicle, trailer, horse-drawn vehicle, railroad car or boat, by the owner from one (1) county to the next adjoining county within the state of Montana on to land owned or controlled by the owner of livestock without leaving land owned or controlled by such owner when moved for the purpose of pasturing, feeding, or changing the range thereof;

(e) to any animal or animals when driven on the hoof from one (1) county to an adjoining county within the state for the purpose of shipment by railroad or delivery to a licensed public market by any person who has been the owner of said animal or animals for a period of at least three (3) months;

(f) to any such animal or animals from one (1) county to be consigned to, and which actually reach by means other than railroad a licensed livestock market located in another county of the state at which the livestock commission of the state of Montana regularly mantains a stock inspector, and for which a market consignment permit has been obtained in a manner provided by law;

(g) to any such animal or animals when hauled by truck or trailer from one county to an adjoining county within the state for the purpose of shipment by railroad at which shipping point the livestock commission of the state of Montana maintains a stock inspector or where a deputy state stock inspector is available, and for which a transportation permit has been obtained in the manner provided by law.

(7) Except as provided for in *subsections 5 (b),* 6 (a) and 6 (b) of this *section,* nothing contained in this chapter shall authorize or permit any person to remove or cause to be removed any animal or animals from any county in this state to a location outside of the state of Montana on the hoof, or by any means or manner whatsoever, unless such animal or animals shall have been inspected for brands by a state stock inspector or deputy state stock inspector and certificate for such inspection shall have been issued in connection with and for the purpose of such transportation or removal as in this act provided.

(8) It shall be the duty and responsibility of any person in possession of livestock to secure such inspection of livestock as provided in this chapter before any livestock shall leave the state of Montana."

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Section 2. Section 46-802, R.C.M. 1947, is amended to read as follows:

"46-802. **Duties of state stock inspectors and deputy stock inspectors—Montana livestock commission authorized to make rules and regulations.** It shall be the duty of state stock inspectors and deputy state stock inspectors, upon the application of the owner of any such animal referred to in section 46-801, or the duly authorized agent of such owner, to inspect all such animals intended for sale, removal or shipment as in this act provided, and to issue his certificate of inspection therefor, if it shall appear with reasonable certainty that the applicant is the owner of such animal or has the lawful right to the possession thereof.

The inspection herein provided for shall include such examination of the animal and all marks and brands thereon as to identify the same. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or of the applicant for inspection, and the purchaser or transferee, if applicable, the class of the animal specified in section 46-801, the marks and brands, if any, upon the animal, and such other information and upon such form or certificate as the livestock commission may from time to time require. One (1) copy of the certificate shall be retained by the inspector, one (1) copy thereof shall be furnished by the inspector to the owner or shipper of the animal, and one (1) shall be filed by the inspector with the secretary of the livestock commission at Helena, Montana, within five (5) days.

If it shall appear with reasonable certainty that the applicant is the owner of such animals or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors or any sheriff or deputy sheriff, upon application of an owner or his agent of any such animal or animals to be consigned and delivered directly to a licensed livestock market located in another county of the state, or delivered directly to a shipping point duly approved by the Montana livestock commission where a livestock inspector is available for inspection, in an adjoining county, shall issue to such person a separate market consignment permit or transportation permit for each owner when the owner, or owners, or their duly authorized agents sign such permit certifying the brands, description and designation of such animals. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or animals and the name and address of the person actually transporting the animal or animals

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if different than the owner, the kind of animal or animals, the marks and brands, if any, upon the animal or animals, a description of the vehicle or vehicles to be used to transport such animal or animals to include the license number of such vehicle or vehicles and such other information and upon such form of permit as the livestock commission may from time to time require. Any such permit so issued shall be good for shipment within thirty-six (36) hours from date and time of issue; provided, however, that permits not used within this time limitation must be returned to the issuing officer to be canceled and to release permitee from performance. One copy of such permit shall be retained by the inspector or sheriff's office, one copy shall be filed by the inspector or sheriff's office with the secretary of the livestock commission at Helena, Montana within five (5) days of the date of issue, and one copy shall be furnished by the inspector or sheriff's office to the owner or shipper of the animal or animals which such copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the animal or animals are delivered.

The Montana livestock commission is hereby authorized to make such rules and regulations as shall be deemed necessary to carry out the provisions of this act."

Section 3. Section 46-803, R.C.M. 1947, is amended to read as follows:

"46-803. **Seizure of livestock, retention of livestock, sale, disposal of proceeds.** All state stock inspectors inspecting any livestock, either before or after shipment or removal from any county in this state, or upon a change of ownership, shall, in addition to the powers granted them by law, possess the further authority to inspect and seize either at the point of sale, shipment or destination or en route any livestock, or proceeds thereof, which said inspector may have good reason to believe is stolen, or upon which brands have been altered or obliterated, or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection issued before shipment or removal of such livestock.

Upon taking possession of any such livestock in the exercise of the authority granted by this act, the state stock inspector may retain same in his possession for not to exceed fifteen (15) days for the purpose of making further investigation relative to its ownership, or may either at once or any time within said period of fifteen (15) days sell said livestock at any licensed livestock market, or in the open market, for the best available price

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and remit the proceeds, less the cost of keeping and sale, to the livestock commission together with a full description of the animal sold, giving marks and brand, if any, and a statement of the reason for the seizure and sale thereof. Said proceeds shall be deposited by the livestock commission with the state treasurer and credited to the agency fund, where it shall be subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock."

Section 4. Section 46-804, R.C.M. 1947, is amended to read as follows:

"46-804. **Fees for inspection and livestock transportation** *permits.* (a) For the service of inspection herein provided for before removal from county, or before change of ownership, the inspector making such inspections shall receive twenty-five cents (25¢) per head for twelve (12) head or less, or three dollars ($3.00) for from twelve (12) head to *twenty (20)* head and shall receive *twenty* cents *(20¢)* per head for each animal over *twenty (20)* head; for the issuance of a market consignment permit or transportation permit *(other than a permanent permit)* herein provided for before removal from county, the inspector, sheriff or deputy sheriff issuing such permits shall receive twenty-five cents (25¢) for each permit issued for twelve (12) head or less; fifty cents (50¢) for each permit for twelve (12) to thirty (30) head and one dollar ($1.00) for each permit issued for over thirty (30) head and shall receive in addition thereto his necessary actual expenses, to be paid by the owner thereof or the person for whom the inspection is made or permit issued. *For the issuance of a permanent horse transportation permit herein provided, the state stock inspector taking the application for permit shall receive five dollars ($5) per head for each permit issued.* All such inspection and permit fees and expenses shall be collected by the inspector, sheriff or deputy sheriff making the same at the time of inspection or issuance of permit and all such fees and expenses collected by a deputy state stock inspector, sheriff or deputy sheriff shall be retained by him and all such fees and expenses collected by a state stock inspector shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(b) For the service of inspection herein provided for before any such animal is sold or offered for sale at any licensed public market, the state stock inspector making such inspection shall receive (1) twenty cents (20¢) per head for any such animal originating within the county in the state in which market is maintained, or transported under a market consignment permit, and (2) ten cents (10¢) per head for any such animal previously inspected before re-

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moval from county as herein provided. All such fees to be paid by the owner thereof or by the person for whom the inspection is made. For inspecting any such animal before same is removed from the premises of such licensed public market the state stock inspector making the inspection shall receive ten cents (10¢) per head from the owner thereof or the person for whom the inspection is made. All such fees for inspection at such market shall be collected by the state stock inspector making the inspection at the time such inspection is made and shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(c) A question or doubt having arisen as to the intention of the legislature and policy of the state concerning the disposition of inspection fees and expenses collected by the state stock inspectors of the state of Montana for the inspection of livestock, it is hereby declared to be the policy of this state and the intent of the said twenty-eighth legislative assembly of the state of Montana that all such inspection fees and expenses be paid to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission, and that said state stock inspectors shall be paid for their services and receive for their expenses only such sums as shall be agreed upon by the livestock commission of the state of Montana and fixed and determined by the state board of examiners."

Approved: March 9, 1973.

CHAPTER NO. 248

An Act Providing for Redefining a Premarital Standard Serological Test to Include Additional Tests; and Amending Sections 48-134, 48-136 and 48-137, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 48-134, R.C.M. 1947, is amended to read as follows:

"48-134. **Proof of age—premarital test certificate required of applicants for marriage license.** *(1)* Before *a* person, who is authorized by law to issue marriage licenses, shall issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age, and, if such applicant is a minor, the consent required by section 48-118, and shall also file

with him a certificate from a duly qualified physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by laws of Montana to make such a certificate, which certificate shall state that the applicant has been given such an examination, including a standard serological test, made not more than twenty (20) days *before* the date of issuance of *the* license, and that the report of the results of *the* serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to *the* proposed contract.

(2) A person who by law is validly able to obtain a marriage license in *this* state is also validly able to give his or her consent to any examination and tests required by this act. In submitting the blood specimen to the laboratory, the physician, or any other person authorized by the laws of Montana to make such a certificate, shall designate that it is a premarital test.''

Section 2. Section 48-136, R.C.M. 1947, is amended to read as follows:

"48-136. **Certificates from other state or for military personnel, when acceptable.** Certificate forms provided by other states having comparable laws will be accepted for persons who have been examined and who have received *a standard* serological *test* outside of Montana, *if* such examinations and tests are performed not more than twenty (20) days *before* the issuance of a marriage license. Certificates provided by the United States *armed forces* will be accepted for military personnel, *if* such certificates are signed by a medical officer commissioned in the United States *armed forces* or United States public health service; and the certificates state the examinations are *standard* serological tests and were performed not more than twenty (20) days *before* the issuance of the marriage license.''

Section 3. Section 48-137, R.C.M. 1947, is amended to read as follows:

"48-137. **Definition of test—rules and regulations.** For the purpose of this act, a standard serological test shall be a test for syphilis, *rubella immunity,* approved by the *department* of health *and environmental sciences. An* approved laboratory shall be the laboratory of the *department* of health *and environmental sciences* or a laboratory approved by that *department.* Any other state, United States public health service or United States *armed forces* laboratory shall be considered approved for the purpose of this act. Such laboratory test may be made on request at the laboratory of the *department* of health *and environmental sciences.* Reasonable rules for reports to be submitted by any laboratory making tests and

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the manner of furnishing *the reports* to the certifying physician and the state shall be *adopted* by the *department* of health *and environmental sciences.*"

Approved: March 9, 1973.

CHAPTER NO. 249

An Act Amending Section 84-6701, R.C.M. 1947, to Specifically Adopt the Multistate Tax Compact Provisions Relating to Interstate Audits.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-6701, R.C.M. 1947, is amended to read as follows:

"84-6701. **Compact adopted—text.** The "Multistate Tax Compact" is hereby enacted into law and entered into with all jurisdictions legally joining therein. *Article VIII of the Multistate Tax Compact relating to interstate audits is specifically adopted.*

ARTICLE I. PURPOSES.

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicative taxation.

ARTICLE II. DEFINITIONS.

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

2. "Subdivision" means any government unit or special district of a state.

3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.

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4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

ARTICLE III. ELEMENTS OF INCOME TAX LAWS.

Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or

by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.

3. Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV. DIVISION OF INCOME.

1. As used in this Article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, co-operative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign county or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another state if (1)

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in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interests, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this

state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

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(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

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(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS.

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates. Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificates or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI. THE COMMISSION.

Organization and Management.

1. (a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency, the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1 (e) of this Article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

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(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and con-

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ditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice-chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

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(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1 (i) of this Article: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.

(f) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII. UNIFORM REGULATIONS AND FORMS.

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use

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tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII. INTERSTATE AUDITS.

1. This Article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being

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examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: provided that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this Article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this Article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this Article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this Article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this Article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this Article, "tax," in addition to the meaning

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ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX. ARBITRATION.

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be *knowledgeable* and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residents within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

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6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this Article.

8. Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a

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written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL.

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdrew from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION.

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III [paragraph] (2) of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: provided that the definition of "tax" in Article VIII [paragraph] (9) may apply for the purposes of that Article and the commission's powers of study and recommendation pursuant to Article VI [paragraph] (3) may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII. CONSTRUCTION AND SEVERABILITY.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be sever-

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able and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or of the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters."

Approved March 9, 1973.

CHAPTER NO. 250

An Act to Change the Name of the Department of Law Enforcement and Public Safety to the Department of Justice; Amending Sections 82A-104, 82A-202, 82A-703, 82A-802, 82A-803, 82A-1201, 82A-1202, 82A-1203, 82A-1205, 82A-1602 and 82A-1605, R.C.M. 1947; Adding a New Section; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82A-104, R.C.M. 1947, is amended to read as follows:

"82A-104. **Structure of executive department of state government.** (1) In accordance with the reorganization amendment, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive department of state government, and their respective functions, are allocated by this act among and within the following departments created by this act:

(a) Department of administration.

(b) Department of agriculture.

(c) Department of business regulation.

(d) Department of education.

(e) Department of health and environmental sciences.

(f) Department of highways.

(g) Department of institutions.

(h) Department of intergovernmental relations.

(i) Department of labor and industry.

(j) Department of state lands.

(k) Department of *justice.*

(l) Department of livestock.

(m) Department of military affairs.

(n) Department of natural resources and conservation.

(o) Department of professional and occupational licensing.

(p) Department of public service regulation.

(q) Department of revenue.

(r) Department of social and rehabilitation services.

(s) Department of fish and game.

(2) The governor, lieutenant governor, secretary of state, attorney general, state treasurer, state auditor, and superintendent of public instruction each head a constitutional office. Except as otherwise provided in this act, the statutory functions of each constitutional officer are continued.

(3) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a "division." Each division shall be headed by an "administrator."

(b) The principal unit of a division is a "bureau." Each bureau shall be headed by a "chief."

(c) The principal unit of a bureau is a "section." Each section shall be headed by a "supervisor." "

Section 2. Section 82A-202, R.C.M. 1947, is amended to read as follows:

"82A-202. **Agencies abolished—functions transferred to department.** (1) The department of administration and its units, created in Title 82, chapter 33, R.C.M. 1947, including the state purchasing department created in Title 82, chapter 19, R.C.M. 1947, are abolished, and their functions, except the functions contained in Title 69, chapter 21, R.C.M. 1947 (pertaining to building construction standards), transferred to the department of *justice* in chapter 12 of this act, are transferred to the department of administration created in this chapter. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to

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the department of administration or its units or the state purchasing department, except the references contained in Title 69, chapter 21, R.C.M. 1947, means the department of administration created in this chapter.

(2) The office of state controller, created in Title 82, chapter 1, R.C.M. 1947, the position of the state purchasing agent, created in Title 82, chapter 19, R.C.M. 1947, and the position of budget director, created in Title 79, chapter 10, R.C.M. 1947, are abolished, and their functions, except the functions contained in Title 69, chapter 21, R.C.M. 1947 (pertaining to building construction standards), transferred to the department of *justice* in chapter 12 of this act, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state controller, state purchasing agent, or budget director, except the references contained in Title 69, chapter 21, R.C.M. 1947, means the department of administration created in this chapter.

(3) The state board of review, created in Title 79, chapter 24, R.C.M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of review means the department of administration created in this chapter.

(4) The Montana highway patrolmen's retirement board, created in Title 31, chapter 2, R.C.M. 1947, is abolished, and its functions, except the quasi-judicial functions transferred to the board of administration in section 82A-211 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana highway patrolmen's retirement board, except the references relating to the quasi-judicial functions transferred to the board of administration in section 82A-211 of this chapter, means the department of administration created in this chapter.

Section 3. Section 82A-703, R.C.M. 1947, is amended to read as follows:

"82A-703. **Functions of highway commission transferred to department.** The functions of the highway commission, which is provided for in Title 32, chapter 24, R.C.M. 1947, except its functions acting as the Montana highway patrol board, contained in Title 31, chapter 1, R.C.M. 1947, transferred to the department of *justice* or the attorney general in chapter 12 of this act, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the highway commission, except the references in Title 31, chapter 1,

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R.C.M. 1947, to the commission acting as the Montana highway patrol board, means the department of highways created in this chapter."

Section 4. Section 82A-802, R.C.M. 1947, is amended to read as follows:

"82A-802. **Department of institutions abolished — functions transferred to department.** The state department of institutions, created in Title 80, chapter 14, R.C.M. 1947, and its units are abolished, and their functions, except those enumerated below, are transferred to the department of institutions created in this chapter:

(1) The functions with respect to the position or registrar of motor vehicles, trailers and semitrailers, which is createt in Title 53, chapter 1, R.C.M. 1947, transferred to the department of *justice* in chapter 12 of this act.

(2) The functions with respect to the state bureau of criminal identification and investigation, which is provided for in Title 80, chapter 30, R.C.M. 1947, transferred to the department of *justice* in chapter 12 of this act. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state department of institutions or its units means the department of institutions created in this chapter."

Section 5. Section 82A-803, R.C.M. 1947, is amended to read as follows:

"82A-803. **Functions of board of institutions transferred to department.** The functions of the state board of institutions, which is provided for in Title 80, chapter 14, R.C.M. 1947, except those enumerated below, are transferred to the department of institutions created in this chapter:

(1) The quasi-judicial functions continued in the board under section 82A-806 of this chapter.

(2) The functions of the board with respect to the position of registrar of motor vehicles, trailers and semitrailers, which is created in Title 53, chapter 1, R.C.M. 1947, transferred to the department of *justice* in chapter 12 of this act.

(3) The functions of the board with respect to the state bureau of criminal identification and investigation, which is created in Title 80, chapter 20, R.C.M. 1947, transferred to the department of *justice* in chapter 12 of this act. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of institutions, means the department of institutions created in this chapter."

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Section 6. Section 82A-1201, R.C.M. 1947, is amended to read as follows:

"82A-1201. **Department of *justice*—creation—head.** There is created a department of *justice*. The department head is the attorney general."

Section 7. Section 82A-1202, R.C.M. 1947, is amended to read as follows:

"82A-1202. **Agencies abolished—functions transferred to department.** (1) The state bureau of criminal identification in investigation, provided for in Title 80, chapter 20, R.C.M. 1947, is abolished, and its statutory functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state bureau of criminal identification and investigation means the department of *justice*.

(2) The position of criminal investigator created within the office of the attorney general in Title 82, chapter 4, R.C.M. 1947, is abolished, and the functions of the position are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the position of criminal investigator means the department of *justice*.

(3) The state law enforcement teletypewriter communications committee, provided for in Title 82, chapter 39, R.C.M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the law enforcement teletypewriter communications committee means the department of *justice*.

(4) The Montana law enforcement academy advisory board, provided for in Title 75, chapter 52, R.C.M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana law enforcement academy advisory board means the department of *justice*.

(5) The office of state fire marshal, created in Title 82, chapter 12, R.C.M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the office of state fire marshal means the department of *justice*.

(6) The state building code council, created in Title 69, chapter 21, R.C.M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state building code council means the department of *justice*.

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Section 8. Section 82A-1203, R.C.M. 1947, is amended to read as follows:

"82A-1203. **Additional functions transferred to department.** (1) The functions of the state electrical board of making inspections of electrical installations and issuing tags and charging fees therefor in section 66-2805(c)(i), R.C.M. 1947, and of establishing an electrical code in section 66-2802(i), R.C.M. 1947, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state electrical board relating to its functions of making inspections of electrical installations and issuing tags and charging fees therefor or of establishing an electrical code means the department of *justice.*

(2) The functions of the state controller and the department of administration, which are contained in Title 69, chapter 21, R.C.M. 1947 (pertaining to the state building code), are transferred to the department. Unless inconsistent with this act, any reference in Title 69, chapter 21, R.C.M. 1947, to the state controller or the department of administration means the department of *justice.*

(3) The function of the secretary of state of registering machine guns in section 94-8108, R.C.M. 1947, is transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the secretary of state relating to his function of registering machine guns means the department of *justice.*"

Section 9. Section 82A-1205, R.C.M. 1947, is amended to read as follows:

"82A-1205. **Agencies abolished—functions transferred to division.** (1) The position of registrar of motor vehicles, trailers and semitrailers, created in Title 53, chapter 1, R.C.M. 1947, is abolished, and the functions of the position, except the function of providing license plates for motor vehicles provided for in Title 63, chapter 1, R.C.M. 1947, are transferred to the division of motor vehicles. The function of providing license plates remains a function of the warden of the state prison. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the registrar of motor vehicles, trailers and semitrailers, except the reference relating to the function of providing license plates, means the division of motor vehicles of the department of *justice.*

(2) The Montana highway patrol board, provided for in Title 31, chapter 1, R.C.M. 1947, is abolished, and its functions, except the function of appointing the highway patrol chief in section 31-104, R.C.M. 1947, which is hereby transferred to the

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attorney general, are transferred to the division of motor vehicles. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana highway patrol board means the division of motor vehicles of the department of *justice*, except references in section 31-104, R.C.M. 1947, relating to the function of appointing the highway patrol chief, where it means the attorney general."

Section 10. Section 82A-1602, R.C.M. 1947, is amended to read as follows:

"82A-1602. **Department — agencies transferred to.** The following agencies are continued, are transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act, and are renamed as indicated:

(1) Abstractors board of examiners, created in Title 66, chapter 21, R.C.M. 1947, renamed the board of abstractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the abstracters board of examiners means the board of abstracters.

(2) State board of public accountancy, created in Title 66, chapter 18, R.C.M. 1947, renamed the board of public accountants. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of public accountancy means the board of public accountants.

(3) Board of architectural examiners, provided for in Title 66, chapter 1, R.C.M. 1947, renamed the board of architects. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of architectural examiners means the board of architects.

(4) State athletic commission, created in Title 82, chapter 3, R.C.M. 1947, renamed the board of athletics. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state athletic commission means the board of athletics.

(5) Board of barber examiners, created in Title 66, chapter 4, R.C.M. 1947, renamed the board of barbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of barber examiners means the board of barbers.

(6) State board of chiropody medical examiners, created in Title 66, chapter 6, R.C.M. 1947, renamed the board of chiropodists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropody medical examiners means the board of chiropodists.

(7) State board of chiropractic examiners, created in Title 66,

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chapter 5, R.C.M. 1947, renamed the board of chiropractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropractic examiners means the board of chiropractors.

(8) Montana state examining board of cosmetology, created in Title 66, chapter 8, R.C.M. 1947, renamed the board of cosmetologists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state examining board of cosmetology means the board of cosmetologists.

(9) State board of dental examiners of the state of Montana, created in Title 66, chapter 9, R.C.M. 1947, renamed the board of dentists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of dental examiners of the state of Montana means the board of dentists.

(10) State electrical board, created in Title 66, chapter 28, R.C.M. 1947, renamed the board of electricians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state electrical board, except the references relating to the functions of making inspections of electrical installations and issuing tags and charging fees therefor or of establishing an electrical code, transferred to the department of *justice* in chapter 12 of this act, means the board of electricians.

(11) State board of registration for professional engineers and land surveyors, created in Title 66, chapter 23, R.C.M. 1947, renamed the board of professional engineers and land surveyors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of registration for professional engineers and land surveyors means the board of professional engineers and land surveyors.

(12) Montana board of hearing aid dispensers, created in Title 66, chapter 30, R.C.M. 1947, renamed the board of hearing aid dispensers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana board of hearing aid dispensers means the board of hearing aid dispensers.

(13) Montana horse racing commission, created in Title 62, chapter 5, R.C.M. 1947, renamed the board of horse racing. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana horse racing commission means the board of horse racing.

(14) State board of massage examiners, created in Title 66, chapter 29, R.C.M. 1947, renamed the board of masseurs. Unless inconsistent with this act, any reference in the Revised Codes of Mon-

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tana, 1947, to the state board of massage examiners means the board of masseurs.

(15) Montana state board of medical examiners, created in Title 66, chapter 10, R.C.M. 1947, renamed the board of medical doctors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of medical examiners means the board of medical doctors.

(16) State board of morticians, created in Title 66, chapter 27, R.C.M. 1947, renamed the board of morticians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of morticians means the board of morticians.

(17) State board of examiners for nursing home administrators, created in Title 66, chapter 31, R.C.M. 1947, renamed the board of nursing home administrators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of examiners for nursing home administrators means the board of nursing home administrators.

(18) Montana state board of nursing, created in Title 66, chapter 12, R.C.M. 1947, renamed the board of nurses. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of nursing means the board of nurses.

(19) Montana state board of examiners in optometry, created in Title 66, chapter 13, R.C.M. 1947, renamed the board of optometrists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of examiners in optometry means the board of optometrists.

(20) State board of osteopathic examiners, provided for in Title 66, chapter 14, R.C.M. 1947, renamed the board of osteopaths. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of osteopathic examiners means the board of osteopaths.

(21) Montana state board of pharmacy, created in Title 66, chapter 15, R.C.M. 1947, renamed the board of pharmacists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of pharmacy means the board of pharmacists.

(22) Board of plumbing examiners (or the state plumbing board), provided for in Title 66, chapter 24, R.C.M. 1947, renamed the board of plumbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of plumbing examiners or the state plumbing board means the board of plumbers.

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(23) Montana real estate commission, created in Title 66, chapter 19, R.C.M. 1947, renamed the board of real estate. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana real estate commission means the board of real estate.

(24) State board of veterinary medical examiners, created in Title 66, chapter 22, R.C.M. 1947, renamed the board of veterinarians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of veterinary medical examiners means the board of veterinarians.

(25) Board of certification for water and waste water operators, provided for in Title 69, chapter 59, R.C.M. 1947, renamed the board of water and waste water operators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of certification for water and waste water operators means the board of water and waste water operators.

(26) Water well contractors' examining board of the state of Montana, created in Title 66, chapter 26, R.C.M. 1947, renamed the board of water-well contractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the water-well contractors' examining board of the state of Montana means the board of water-well contractors."

Section 11. Section 82A-1605, R.C.M. 1947, is amended to read as follows:

"82A-1605. **Boards within department—duties.** Except for the inspection and code-making functions of the state electrical board transferred to the department of *justice* and enumerated in chapter 12 of this act, and subject to the administrative control of the department and the director of professional and occupational licensing as set forth in section 82A-108 of this act and under this chapter, each agency transferred to the department shall continue to exercise its prescribed statutory functions. In addition, each board within the department shall:

(1) Set and enforce standards, rules, and regulations governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction.

(2) Sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by the legal counsel appointed under section 82A-1604(1) of this chapter.

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(3) Pay to the department its pro rata share of the assessed costs of the department under section 82A-1603(6)."

Section 12. There is a new section to be numbered 82A-1209, R.C.M. 1947, which reads as follows:

82A-1209. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of law enforcement and public safety means the department of justice.

Section 13. This act is effective on its passage and approval.

Approved: March 9, 1973

CHAPTER NO. 251

An act providing for a definition of "independent contractor" in the Workmen's Compensation Act; and repealing section 92-438, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-438.1, R.C.M. 1947, which reads as follows:

92-438.1 **Independent contractor defined.** An "independent contractor" is one who renders service in the course of an occupation and:

(1) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(2) is engaged in an independently established trade, occupation, profession or business.

Section 2. Section 92-438, R.C.M. 1947, is repealed.

Approved: March 10, 1973

CHAPTER NO. 252

An Act Providing For Medical and Hospital Services To Be Furnished Injured Claimants Under The Workmen's Compensation Act; Repealing Section 92-706, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-706.1, R.C.M. 1947, which reads as follows:

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92-706.1 **Medical and hospital services approved by the division are furnished.** In addition to the compensation provided by this act and as an additional benefit separate and apart from compensation, the following shall be furnished:

During the first thirty-six (36) months after the happening of the injury, the employer or insurer shall furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained. The division, upon application of the injured workman may, for good cause, grant reasonable extensions of the benefits provided in this section.

All hospitals must submit to the division of workmen's compensation, a schedule of fees and charges for treatment of injured workmen to be in effect for at least a twelve (12) month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least thirty (30) days prior to its effective date and shall not exceed the charges prevailing in the hospital for similar treatment of private patients.

Section 2. Section 92-706, R.C.M. 1947, is repealed.

Approved: March 10, 1973

CHAPTER NO. 253

An Act Providing For Amendatory Language To An Existing Funding Procedure Provided In A New Section; And Repealing Section 92-116, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-116.1, R.C.M. 1947, which reads as follows:

92-116.1 **Administration fund.** There is hereby established in the state treasury a workmen's compensation administration fund out of which all costs of administering the workmen's compensation and occupational disease and occupational safety and health act are to be paid upon lawful appropriation. The following moneys collected by the workmen's compensation division shall be deposited in the state treasury to the credit of the workmen's compensation administrative fund and shall be used for the administrative expenses of the division:

(1) all fees and fines provided in sections 92-119, 92-820, 92-1334 and 92-1358;

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(2) all assessments paid to the division by employers who elect to become bound by plan no. 1 of this act;

(3) all assessments paid to the division of insurers who insure employers under plan no. 2 of this act;

(4) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(5) all assessments levied against the industrial insurance account in the division fund as provided by this act.

The administration fund shall be debited with expenses incurred by the division in the general administration of the provisions of this act, including the salaries of its members, officers and employees, and the actual and necessary traveling expenses and disbursements of such members, officers and employees, incurred while on the business of the division either within or without the state.

Disbursements from the administration moneys shall be made after being approved by the division upon claim therefor.

The division shall levy against the industrial insurance account in the division fund an assessment in an amount deemed reasonable and necessary to provide adequate administrative funds for the administration of the various acts. The assessment is to be levied against the gross annual direct premium income for the previous fiscal year, less return premiums, and said assessment shall be paid forthwith by the treasurer into the administration moneys in the earmarked revenue fund.

Section 2. Section 92-116, R.C.M. 1947, is repealed.

Approved: March 10, 1973

CHAPTER NO. 254

An Act Providing For A Subsequent Injury Fund In The Workmen's Compensation Act; And Repealing Section 92-709A, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-709.1, R.C.M. 1947, which reads as follows:

92-709.1 **Subsequent injury provisions — fund — procedures.** (1) As used in this act:

(a) "Vocationally handicapped" means a person who has a

medically certifiable permanent physical impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if employee should become unemployed considering such factors as the person's age, education, training, experience, and employment rejection.

(b) "Certifying agency" means the section of rehabilitation, division of workmen's compensation.

(c) "Certificate" means documentation issued by the certifying agency to an individual who is vocationally handicapped.

(d) "Fund" means the subsequent injury fund.

(2) A person who wishes to be certified as vocationally handicapped for purposes of this section may apply to the certifying agency on forms furnished by that agency. The certifying agency shall conduct an investigation and shall issue a certificate to a person who meets the requirements for vocationally handicapped certification.

(3) Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the employer shall submit to the certifying agency, on forms furnished by the agency, all pertinent information requested by the agency. The certifying agency shall acknowledge receipt of the information. Failure to file the required information with the certifying agency within sixty (60) days after the first day of the vocationally handicapped person's employment or retention in employment, precludes the employer from the protection and benefits of this section unless the information is filed before an injury for which benefits are payable under this section.

(4) The administrator of the division shall promulgate rules for certification of vocationally handicapped persons.

(5) A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability, shall be paid compensation in the manner and to the extent provided in this act, or in case of his death resulting from such injury, the compensation shall be paid to his beneficiaries or dependents. The liability of the employer for payment of compensation, for furnished medical care and burial as provided in this act shall be limited to those benefits occurring during the period of one hundred four (104) weeks after the date of injury. Thereafter, all compensation and the cost of all medical care and burial shall be the liability of the fund.

(6) When a vocationally handicapped person receives a personal injury, the procedure and practice provided in this act ap-

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plies to all proceedings under this section, except where specifically otherwise provided herein. Not less than ninety (90) nor more than one hundred fifty (150) days before expiration of one hundred four (104) weeks after the date of injury, the employer, carrier, or the industrial insurance fund, as the case may be, shall notify the fund whether it is likely that compensation may be payable beyond a period of one hundred four (104) weeks after the date of the injury. The fund, thereafter, may review, at reasonable times, such information as the employer, carrier or industrial insurance fund as regarding the accident, and the nature and extent of the injury and disability.

(7) If the fund does not notify the carrier of its intent to dispute the payment of compensation, medical and burial benefits, the employer, carrier, or industrial insurance fund, shall continue to make payments on behalf of the fund, and shall be reimbursed by the fund for all benefits paid that pertain to the period beyond one hundred four (104) weeks after the date of the injury. However, at any time subsequent to one hundred four (104) weeks after the date of injury, the fund may notify the carrier of a dispute as to payment of benefits. The liability of the fund to reimburse the employer, carrier, or the industrial insurance fund shall be suspended thirty (30) days thereafter until the controversy is determined.

(3) The obligation imposed by this section on the employer, carrier, or industrial insurance fund to make payments on behalf of the fund does not impose an independent liability on the employer, carrier or industrial insurance fund. After the right to reimbursement has been established, reimbursement payment shall be made promptly on a proper showing every six (6) months. If the employer, carrier or the industrial insurance fund does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to the payments.

(9) If an employee was employed or retained in employment under the provisions of this act and a dispute or controversy arises as to payment of benefits or the liability therefor, the division shall hold a hearing and resolve all disputes. On motion made in writing by the employer, carrier, or industrial insurance fund, the administrator shall join the fund as a party defendant.

(10) The division within five (5) days of the entry of an order joining the fund as a party defendant shall give the fund written notice thereof not less than twenty (20) days before the date of hearing and shall include the name of employee, employer, and the date of the alleged injury or disability. The fund, named as a defendant, shall have ten (10) days after the date of notification to file objections to being named as party defendant. On the

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date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection, and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(11) At the time of the hearing, employer and fund may appear, cross-examine witnesses, give evidence and defend both on the issue of liability of the employer to the employee and on issue of the liability of the fund.

(12) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the employer and the fund.

(13) Benefits payable from the fund may be converted into a lump sum payment only upon a substantial showing for an equitable cause, the advisability of the lump sum payment to be determined and approved by the administrator of the division.

(a) In every case of the death of an employee under this act, the insurer shall pay to the fund the sum of one thousand dollars ($1,000). In addition, the division may assess every insurer an amount not to exceed five percent (5%) of the compensation paid in Montana in the preceding fiscal year. The assessment shall be transmitted annually to the subsequent injury fund by the employer or insurer.

(b) When in judgment of the administrator the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities, the administrator may at his discretion suspend or reduce further collection of assessments for a period of time determined by the administrator.

Section 2. Section 92-709A, R.C.M. 1947, is repealed, and the assets and liabilities acquired under this section are hereby transferred to the subsequent injury fund.

Approved: March 10, 1978

CHAPTER NO. 255

An Act to Amend Section 75-6915, R.C.M. 1947, to reconcile said Section of Law with Section 75-6902, R.C.M. 1947, by deleting the provision for a nonaccredited school to receive county equalization moneys.

Be it enacted by the Legislative Assembly of the State of Montana:

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Section 1. Section 75-6915, R.C.M. 1947, is amended to read as follows:

"75-6915. **Formulas for apportionment of county equalization moneys.** After making such deductions prescribed in section 75-6914, the county superintendent shall apportion the remaining amount of moneys available in the basic county tax account to the several elementary districts of the county and in the basic special tax for high schools account to the several high school districts of the county in proportion to their needs under the foundation program in accordance with the following procedure:

Elementary Schools

(1) Determine the percentage that the sum of interest and income moneys plus the county equalization moneys available for the support of the foundation programs of the elementary districts in the county is of the total amount of the foundation programs of all such elementary districts.

(2) Determine the percentage that the interest and income moneys available to each elementary district (excluding any county equalization moneys) is of the amount of the foundation programs of each such elementary district.

(3) Elementary districts in which the percentage determined in subsection (2) exceeds the percentage determined in subsection (1) shall not be entitled to an apportionment of the county equalization moneys available for the equalization of the elementary district foundation program and shall be excluded from further consideration under this procedure.

(4) After elimination of elementary districts under subsection (3), determine the percentage that the sum of the interest and income moneys available to all remaining elementary districts in the county plus the county equalization moneys available for the support of the foundation programs of the elementary districts in the county is of the total amount of the foundation programs of all such remaining elementary district.

(5) The difference between the percentage determined in subsection (4) above and the percentage determined for such eligible elementary district in subsection (2) above, shall be multiplied by the foundation program amount for each remaining elementary district to determine the portion of the county equalization moneys available to each eligible elementary district.

High Schools

(6) Determine the percentage that the county equalization moneys available for the support of the foundation programs of the

high school districts in the county is of the total amount of the foundation programs of all such high school districts.

(7) Multiply the foundation program amount of each high school district by the percentage determined in subsection (6) above to determine the portion of the county equalization moneys available to each high school district.

No territory situated within a county *shall* be excluded from the apportionment of the county equalization moneys under this section solely because such territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year shall not be considered in the apportionment procedure prescribed in this section.

When the total amount of the available county moneys for apportionment under this section is greater than the amount of money to be apportioned under the apportionment procedure prescribed by this section, the excess amount of county moneys shall be retained by the county to be considered as financing during the ensuing school fiscal year under the requirements of subsection (5) of section 75-6912 or subsection (1) of section 75-6913.

The county equalization moneys apportioned under these procedures shall constitute the second source of revenue in calculating the financing of the elementary district foundation program and shall constitute the first source of revenue in calculating the financing of the high school district foundation program. The county superintendent shall use the apportionment procedure prescribed in this section in computing the estimated revenues for the financing of the ensuring year's foundation program for budgeting purposes."

Approved: March 10, 1973.

CHAPTER NO. 256

An Act Amending Section 82A-404, R.C.M. 1947, to abolish the Board of Trade and Transfer its functions to the Department of Business Regulation; and repealing Sections 27-301 through 27-317, 70-201 through 70-233, and Section 82A-405, R.C.M. 1947, and providing an effective date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82A-404, R.C.M. 1947, is amended to read as follows:

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"82A-404. **Board of trade abolished — functions transferred.** (1) The *board of trade,* provided for in title 27, chapter 3, *is abolished and its functions in title 51, chapter 1 (pertaining to the Unfair Practices Act) are transferred to the department of business regulation.* Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of food distributors *or the board of trade* means the *department of business regulation.*"

Section 2. Sections 27-301 through 27-317, sections 70-201 through 70-233 and 82A-405, R.C.M. 1947, are repealed.

Section 3. This act is effective June 30, 1973.

Approved: March 10, 1973.

CHAPTER NO. 257

An Act to allow the registered owner of a passenger motor vehicle registered with the Registrar of Motor Vehicles to obtain personalized license plates.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 53-148, R.C.M. 1947, which reads as follows:

53-148. Any person who is the registered owner of a passenger motor vehicle registered with the registrar of motor vehicles, or who makes application for original registration of a passenger motor vehicle or renewal registration of a passenger motor vehicle may, upon payment of the fee prescribed in section 6 of this act, apply to the registrar of motor vehicles for personalized license plates, in the manner prescribed in section 5 of this act which plates shall be affixed to the passenger motor vehicle for which registration is sought in lieu of the regular license plates provided for in this article.

Section 2. There is a new section to be numbered 53-149, R.C.M. 1947, which reads as follows:

53-149. The personalized license plates shall be the same color and design as regular passenger motor vehicle license plates and shall consist of numbers or letters, or any combination thereof not exceeding eight (8) positions and not less than two (2) positions, provided that there are no conflicts with existing passenger, commercial, trailer, motorcycle or special license plates series under this title.

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Section 3. There is a new section to be numbered 53-150, R.C.M. 1947, which reads as follows:

53-150. Personalized license plates, as used in this article, mean license plates that have displayed upon them the registration number assigned to the passenger motor vehicle for which such registration number was issued in a combination of letters or numbers, or both, requested by the owner of the vehicle.

Section 4. There is a new section to be numbered 53-151, R.C.M. 1947, which reads as follows:

53-151. Personalized license plates shall be issued only to the registered owner of the vehicle upon which they are displayed.

Section 5. There is a new section to be numbered 53-152, R.C.M. 1947, which reads as follows:

53-152. An applicant for issuance of personalized license plates or renewal of such plates in subsequent years pursuant to this act shall file an application therefor in such form and by such date as the department may require, indicating thereon the combination of letters or numbers, or both, requested as a registration number. There shall be no duplication of registration numbers, and the registrar of motor vehicles may refuse to issue any combination of letters or numbers, or both, that may carry connotations offensive to good taste and decency or which would be misleading or a duplication of license plates provided for elsewhere in this title.

Section 6. There is a new section to be numbered 53-153, R.C.M. 1947, which reads as follows:

53-153. In addition to all other fees and taxes imposed by law, the applicant for a personalized license plate shall pay a fee of twenty dollars ($20) for the original personalized license plates and a fee of five dollars ($5) for each transfer or renewal thereof. All revenue derived from the fee as provided herein shall be deposited in the motor vehicle recording account of the earmarked revenue fund.

Approved: March 10, 1973.

CHAPTER NO. 258

An Act adopting the Western Interstate Nuclear Compact.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The western interstate nuclear compact is entered into and adopted as follows:

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WESTERN INTERSTATE NUCLEAR COMPACT

ARTICLE I.

Policy and Purpose

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the west and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a cooperative effort in nuclear and related fields, to enhance the economy of the west and contribute to the individual and community well-being of the region's people.

ARTICLE II.

The Board

(a) There is hereby created an agency of the party states to be known as the "western interstate nuclear board," hereinafter called the board. The board shall be composed of one (1) member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon, either for the duration of his membership or for any lesser period of time, by a deputy or assistance, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(b) The board members of the party states shall each be entitled to one (1) vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the board are cast in favor thereof.

(c) The board shall have a seal.

(d) The board shall elect annually, from among its members,

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a chairman, a vice chairman, and a treasurer. The board shall appoint and fix the compensation of an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer, and such other personnel as the board may direct, shall be bonded in such amounts as the board may require.

(e) The executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The board may establish and maintain, independently or in conjunction with any one or more of the party states, or its institutions or subdivisions, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount and conditions, if any, attendant upon any donation or grant accept pursuant to this paragraph or upon any borrowing pursuant to paragraph (g) of this article, together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the board.

(i) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

(j) The board shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The board shall

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publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The board annually shall make to the governor of each party state, a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

ARTICLE III.

Finances

(a) The board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Each of the board's requests for appropriations pursuant to a budget of estimated expenditures shall be apportioned equally among the party states. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(c) The board may meet any of its obligations in whole or in part with funds available to it under article II, paragraph (h) of this compact, provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under article II, paragraph (h) hereof, the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(d) Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

(e) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds han-

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dled by the board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the board.

(f) The accounts of the board shall be open at any reasonable time for inspection to persons authorized by the board, and duly designated representatives of governments contributing to the board's support.

ARTICLE IV.

Advisory Committees

The board may establish such advisory and technical committees as it may deem necessary, membership on which may include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

ARTICLE V.

Powers

The board shall have power to:

(a) Encourage and promote cooperation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields.

(b) Ascertain and analyze on a continuing basis the position of the west with respect to the employment in industry of nuclear and related scientific findings and technologies.

(c) Encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, by-products, and all other appropriate adaptations of scientific and technological advances and discoveries.

(d) Collect, correlate, and disseminate information relating to the peaceful uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology.

(e) Encourage the development and use of nuclear energy, facilities, installations, and products as part of a balanced economy.

(f) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspects of:

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1. Nuclear industry, medicine, or education, or the promotion or regulation thereof.

2. Applying nuclear scientific advances or discoveries, and any industrial commercial or other processes resulting therefrom.

3. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, by-products, installations, or wastes, or to safety in the production, use and disposal of any other substances peculiarly related thereto.

(g) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations or research in any of the scientific, technological or industrial fields to which this compact relates.

(h) Undertake such nonregulatory functions with respect to non-nuclear sources of radiation as may promote the economic development and general welfare of the west.

(i) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields.

(j) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states of their subdivisions in nuclear and related fields, as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency, with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

(k) Consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, by-products, wastes, and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis.

(l) Consider and make recommendations with respect to the assumption of and protection against liability actually of potentially incurred in any phase of operations in nuclear and related fields.

(m) Advise and consult with the federal government concerning the common position of the party states or assist party states with regard to individual problems where appropriate in respect to nuclear and related fields.

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(n) Cooperate with the atomic energy commission, the national aeronautics and space administration, the office of science and technology, or any agencies successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(o) Act as licensee, contractor or sub-contractor of the United States government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one (1) or more other powers conferred upon the board by this compact.

(p) Prepare, publish and distribute, with or without charge, such reports, bulletins, newsletters or other materials as it deems appropriate.

(q) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents.

The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall coordinate requests for aid pursuant to article VI of this compact and the furnishing of aid in response thereto.

Unless the party states concerned expressly otherwise agree, the board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states.

The plan or plans of the board in force pursuant to this paragraph shall provide for reports to the board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances.

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From time to time, the board shall analyze the information gathered from reports of aid pursuant to article VI and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

(r) Prepare, maintain, and implement a regional plan or regional plans for carrying out the duties, powers, or functions conferred upon the board by this compact.

(s) Undertake responsibilities imposed or necessarily involved with regional participation pursuant to such cooperative programs of the federal government as are useful in connection with the fields covered by this compact.

ARTICLE VI.

Mutual Aid

(a) Whenever a party state, or any state or local governmental authorities therein, request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

(b) Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.

(c) No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

(d) All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(e) Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of of-

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ficers, employees and equipment incurred in connection with such requests: provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

(f) Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

ARTICLE VII.

Supplementary Agreements

(a) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of article V of this compact, any two (2) or more of the party states, acting by their duly constituted administrative officials, may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify the purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate.

No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or activity or project contemplated thereby is inconsistent with the provision of this compact or a program or activity conducted by or participated in by the board.

(b) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such

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obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(d) The provisions to this article shall apply to supplementary agreements and activities thereunder, but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake cooperative arrangements or projects.

ARTICLE VIII.

Other Laws and Relations

Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the atomic energy commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of congress; nor limit, diminish, affect, or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor.

(c) Alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the board to own or operate any facility, reactor, or installation for industrial or commercial purposes.

ARTICLE IX.

Eligible Parties, Entry Into Force and Withdrawal

(a) Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law, provided, that it shall not become initially effective until enacted into law by five (5) states.

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(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two (2) years after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall effect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(d) Guam and American Samoa, or either of them may participate in the compact to such extent as may be mutually agreed by the board and the duly constituted authorities of Guam or American Samoa, as the case may be. Such participation shall not include the furnishing or receipt of mutual aid pursuant to article VI, unless that article has been enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction affected. Neither Guam nor American Samoa shall be entitled to voting participation on the board, unless it has become a full party to the compact.

ARTICLE X.

Severability and Construction

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant thereto shall be liberally construed to effectuate the purposes thereof.

Section 2. The governor shall appoint the board member. He shall report directly to the governor. Such member, with the approval of the governor, may designate an alternate to represent the state when he is unable to do so. The member, or his alternate, shall receive no compensation in addition to salary for his services as a member of the board, but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties.

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Section 3. Pursuant to article II, paragraph (j) of the compact, the western interstate nuclear board shall file copies of the bylaws and amendments thereto with the secretary of state.

Approved: March 10, 1973.

CHAPTER NO. 259

An Act to Amend Sections 75-5914 and 75-5915, R.C.M. 1947, to Allow Write-in Voting and Elections on a Regular School Election Day for First Class School District Trustee Elections.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-5914, R.C.M. 1947, is amended to read as follows:

"75-5914. **Nomination caucus in first class elementary district.** In first class elementary districts, trustee candidates shall be nominated at a caucus attended by not less than twenty (20) electors of the district who are qualified under the provisions of section 75-6410. The caucus shall be conducted not less than forty (40) days nor more than sixty (60) days before the regular school election day.

When a candidate nominating caucus in conducted, it shall be a public meeting and a caucus chairman and secretary shall be elected by the caucus participants. The caucus may nominate any number of candidates.

Within ten (10) days after the date of the caucus meeting, the chairman and secretary of the caucus shall certify and file the nominations of the candidates with the clerk of the district by stating the date and place of the caucus, and the name of each candidate nominated. If there are different terms to be filled, the term for which each candidate is nominated also shall be stated."

Section 2. Section 75-5915, R.C.M. 1947, is amended to read as follows:

"75-5915. **Conduct of election and ballot.** The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of section 75-6406. The trustees shall call and conduct the trustee election in the manner prescribed in this Title for school elections. Any elector qualified to vote under the provisions of section 75-6410 may vote at a trustee election. The trustee election ballots shall be substantially in the following form:

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OFFICIAL BALLOT

SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a three (3) year term:

☐ (List the names of the candidates for a three (3) year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a two (2) year term:

☐ (List the names of the candidates for a two (2) year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a one (1) year term:

☐ (List the names of the candidates for a one (1) year term with a vacant square in front of each name.)

In preparing the ballots, only those portions of the prescribed ballot that are applicable to the election to be conducted need to be used. The ballot also shall be prepared with blank lines and vacant squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is subject to election.

When additional trustees in a high school district are to be elected, a separate ballot shall be used in each nominating district showing only the names of those candidates for which the electors of such district are entitled to vote."

Approved: March 10, 1973.

CHAPTER NO. 260

An Act to Amend Section 53-438, R.C.M. 1947, to Prohibit the Attachment of Reduced Limits Endorsements to Motor Vehicle Liability Policies.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 53-438, R.C.M. 1947, is amended to read as follows:

"53-438. **Motor vehicle liability policy defined.** (a) A "motor vehicle liability policy" as said term is used in this act shall mean

an owner's or operator's policy of liability insurance, certified as provided in section 53-436 or section 53-437 as proof of financial responsibility and issued, except as otherwise provided in section 53-437, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance: 1. shall designate by explicit description or by appropriate references all motor vehicles with respect to which coverage is thereby to be granted; and 2. shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: ten thousand dollars ($10,000) because of bodily injury to or death of one person in any one accident and subject to said limit for one person, twenty thousand dollars ($20,000) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged thereof, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this act as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this act.

(e) Such motor vehicle liability policy need not insure any liability under any workmen's compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

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(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein: 1. the liability of the insurance carrier with respect to the insurance required by this act shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy;

2. the satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

3. the insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductable from the limits of liability specified in subdivision 2 of subsection (b) of this section;

4. the policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the act shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this act. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this act.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor

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vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(1) A reduced limits endorsement shall not be issued by any company to be attached to any policy issued in compliance with this section."

Approved: March 10, 1973.

CHAPTER NO. 261

An Act to Amend Section 26-202.1, R.C.M. 1947, Lowering the Age Requirements for Pioneer Fishing and Hunting Licenses, from Age 65 to Age 62.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 26-202.1, R.C.M. 1947, is amended to read as follows:

"26-202.1. **Licenses—fees—classifications of licenses—fees and powers under licenses.** (1) Class A license——Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of four dollars ($4) shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 license—Resident Game Bird License. Except as herein provided, any resident as defined by section 26-202.3, who is twelve (12) years of age or older, may, upon payment of a fee of two dollars ($2) receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the commission.

(a) No hunting licenses shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue

to the person instructed a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any one of the following: a Class A-3, A-4, A-5, B-2, B-5 or B-6 license, may upon payment of an additional sum of three dollars ($3) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3, who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, three dollars ($3); Class A-4, Deer B Tag, five dollars ($5); Class A-5, Elk Tag, three dollars ($3); Class A-6, Black or Brown Bear Tag, five dollars ($5); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and possess the dead bodies of game animals of the state which are so authorized by the regulations of the commission.

(5) Class B License—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of fifteen dollars ($15) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

(7) Class B-2 License—Nonresident Big Game License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of one hundred twenty-five dollars ($125) for the license year from May 1, 1967 to April 30, 1968 and thereafter for subsequent license

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years upon payment of the sum of one hundred fifty dollars ($150) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, and kill game animals in the area or areas designated in the license, as determined by the commission, and to possess the carcasses of same, and pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of five dollars ($5) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall entitle the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days inclusive of the dates indicated on the license.

(9) Class B-5 License—Nonresident Deer License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-5 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) deer in the area or areas designated in the license, as determined by the commission, and to possess the carcass of same.

(10) Class B-6 License—Nonresident Antelope License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) antelope in the area designated in the license, as determined by the commission, and to possess the carcass of same.

(11) Special Licenses. Any applicant who is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Mountain Goat, resident fifteen dollars ($15), nonresident thirty dollars ($30);

Mountain Sheep, resident twenty-fve dollars ($25), nonresident fifty dollars ($50);

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Bison or Buffalo, resident twenty-five dollars ($25), nonresident one hundred dollars ($100);

Antelope, resident three dollars ($3), nonresident ten dollars ($10);

Grizzly Bear, resident five dollars ($5), nonresident grizzly, black or brown bear, thirty-five dollars ($35).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars ($25) within ten (10) days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid applications for special licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.

(12) Class C License—Trapper's License. Any resident as defined in section 26-202.3, upon making application and paying the sum of ten dollars ($10) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap fur-bearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(13) Class C-1 License—Landowner's Trapping License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1) shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said license.

(14) Exception. (a) A resident under the definition of section 26-202.3, who is *sixty-two (62)* years or older shall be entitled to fish and hunt game birds with a pioneer license issued by the state fish and game commission for a fee of fifteen cents ($.15). The form of such license shall be prescribed by the fish and game commission.

(b) Residents of all institutions under the jurisdiction of

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the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) A veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, may fish with a license issued by the head of the hospital on forms prescribed and furnished by the commission. The fee for such license shall be fifteen cents ($.15).

(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(e) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, A-4, and A-5 licenses for one-half (½) of the fees prescribed in this section.

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6 licenses to be issued in each of the hunting districts designated by it.

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(15) Only one (1) license of any one (1) class, except Class B-3 and B-4 licenses, shall be issued to any one (1) person, provided, however, that the commission may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen or destroyed upon payment of the sum of one dollar ($1).

(16) Class AAA Licenses—Sportsman's License. Any resident, as defined by section 26-202.3, who is twelve years of age or older, upon payment of the sum of twenty dollars ($20) shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5 and A-6 licenses. The commission shall furnish each holder of a sportsman's license an appropriate decal.''

Approved: March 10, 1973.

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CHAPTER NO. 262

An Act to Amend Section 87-107, R.C.M. 1947, Clarifying the Determination Process For Labor Disputes; Eliminating the Withholding of Benefits During the Appeal Period; Providing For A Finality of Determination; Eliminating the Option of a Three (3) Member Appeal Board and Retaining a Single Member Appeals Referee; Providing For Promptness of the Payment of Benefits; Providing for the Transmittal of Appeals; Providing Amendments to Conform With Reorganization As Required in Title 82A, Chapter 10, R.C.M. 1947; and Correcting Language.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 87-107, R.C.M. 1947, is amended to read as follows:

"87-107. **Claims for benefits.** (a) Filing. Claims for benefits shall be made in accordance with such regulations as the *division* may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the *division* to each employer without cost to him.

(b) Initial determination. A representative designated by the *division,* and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an *appeals referee* which shall make its decisions with respect thereto in accordance with the procedure prescribed in subsection (c) of this section. *No determination or redetermination of an initial or additional claim shall be made under this section unless five (5) days notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.* The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor.

(c) Finality of determination. A determination or redetermination shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or

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appeals therefrom within five (5) days after delivery of such notification or within seven (7) days after such notification was mailed to his last known address provided, that such period may be extended for good cause.

(d) *Appeals referee.* To hear and decide disputed claim, the *division* shall appoint such impartial *appeals referee* as are necessary for the proper administration of this act, consisting of salaried *examiners* selected in accordance with section 87-123. No person shall participate on behalf of the *division* in any case in which he is an interested party. The *division* may designate alternates to serve in the absence or disqualification of an *appeals referee.*

(e) Notice of decision of appeals referee and time for appeal. After a hearing an appeals referee shall make findings and conclusions promptly and on the basis thereof affirm, modify, or reverse the deputy's determination or redetermination. Each interested party shall be furnished promptly a copy of the decision and the supporting findings and conclusions; this decision shall be final unless further review is initiated pursuant to subsection (g) of this section within five (5) days after delivery of such notification or within seven (7) days after such notification was mailed to his last known address, provided, that such period may be extended for good cause.

(f) Prompt payment of claims. Notwithstanding any provision in subsection (b), (c) or (g) of this section, benefits shall be paid promptly in accordance with a determination or redetermination under this section, or the decision of an appeals referee, the board of labor appeals or a reviewing court under subsection (g) of this section upon the issuance of such determination, redetermination or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in subsection (g) of this section, as the case may be, or the pendency of any such application, filing, or petition), unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.

If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee, or by the board of labor appeals, or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board of labor appeals, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay or other writ or process suspending the payment of such benefits shall be issued by the board or any court; but if such

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decision is finally modified or reversed to deny benefits, no employer's account shall be charged with benefits so paid. Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.

(g) Appeal to board of labor appeals and judicial review. Any interested party dissatisfied with a decision of an appeals referee is entitled to appeal to the board of labor appeals. The division will promptly transmit all records pertinent to the appeal to the board. When a decision is rendered by the board with copies of such decision to all interested parties, including the division, that decision shall become final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within thirty (30) days of the date of mailing of the board's decsion to his last known address."

Approved: March 10, 1973.

CHAPTER NO. 263

An Act to Exempt Police Pension Payments Payable Under Sections 11-1821 and 11-1814, R.C.M. 1947, from Attachment and Other Legal Processes.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 11-1821.1, which reads as follows:

11-1821.1. The benefits provided in sections 11-1814 and 11-1821, are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency or other process of law, and are unassignable.

Approved: March 10, 1973.

CHAPTER NO. 264

An Act Providing for Waiver of Time Requirements in Filing of Claim of Division of Workmen's Compensation if Reasonable Showing Lack of Knowledge of Disability is Shown by Claimant; and Amending Section 92-601, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 92-601, R.C.M. 1947, is amended to read as follows:

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"92-601. **Claims must be presented within what time.** In case of personal injury or death, all claims shall be forever barred unless presented in writing to the employer, the insurer, or the *division*, as the case may be, within twelve *(12)* months from the date of happening of the accident, either by the claimant or someone legally authorized to act for him in his behalf.

The division may, upon a reasonable showing by the claimant of lack of knowledge of disability, waive the time requirement, up to an additional twenty-four (24) months.

Approved: March 10, 1973.

CHAPTER NO. 265

An Act to Repeal Section 32-2804, R.C.M. 1947, which Allows Boards of County Commissioners to Contract with the Federal Government to Construct Roads Without Competitive Bidding.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 32-2804, R.C.M. 1947, is repealed.

Approved: March 10, 1973.

CHAPTER NO. 266

An Act to Amend Sections 84-202, 84301 and 84-302, R.C.M. 1947, to Exempt from Taxation Freeport Merchandise.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-202, R.C.M. 1947, is amended to read as follows:

"84-202. **Exemptions from taxation.** The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for agricultural or horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; provided, the term "institutions of purely public

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charity'' as used in this act shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only, and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.''

Section 2. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. **Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining

claims after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical intruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1¼) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other munici-

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pal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this subsection (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state board of equalization, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distin-

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guished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state board of equalization in such manner and form as may be required by said board.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit before the county assessor of the county in which said property is located, on a farm as may be provided by the state board of equalization supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the com-

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pletion of the form, as to answers given on the form. Provided, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class.

Class *Nine*. All property not included in the *eight* (8) preceding classes."

Section 3. Section 84-302, R.C.M. 1947, is amended to read as follows:

"84-302. **Basis for imposition of taxes.** As a basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

Class 1. One hundred per cent (100%) of its true and full value.

Class 2. Twenty per cent (20%) of its true and full value.

Class 3. Thirty-three and one-third (33 1/3%) of its true and full value.

Class 4. Thirty per cent (30%) of its true and full value.

Class 5. Seven per cent (7%) of its true and full value.

Class 6. Forty per cent (40%) of its true and full value.

Class 7. Seven per cent (7%) of its true and full value.

Class 8. Fifteen per cent (15%) of its true and full value.

Class *9*. Forty per cent (40%) of its true and full value."

Approved: March 10, 1973.

CHAPTER NO. 267

An Act to Amend Sections 11-1925, 11-1926 and 11-1927, R.C.M. 1947, to Provide For Pension Adjustment Based Upon Compensation Paid To Confirmed Firemen.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-1925, R.C.M. 1947, is amended to read as follows:

"11-1925. **Pensions to retired firemen.** Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire

from active service after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund," a "service pension" in an amount which shall be equal to one-half (½) of the sum last received by the member as a monthly compensation for his services as an active member of said fire department. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. *However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half (½) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city.* In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars ($75) per month.

A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such fire department, without qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act."

Section 2. Section 11-1926, R.C.M. 1947, is amended to read as follows:

"11-1926. **Disability pension.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay a "disability pension," out of any moneys in the association's "disability and pension fund," to each and every member of said association who has become injured or disabled by reason of sickness or injury contracted or received in line of duty, in an amount which shall be equal to one-half (½) of the sum last received as a monthly compensation by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a

monthly compensation for his services as an active member of said fire department. *However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half (½) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city.* In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five ($75) dollars per month."

Section 3. Section 11-1927, R.C.M. 1947, is amended to read as follows:

"11-1927. **Pensions to widows and orphans.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the widow or orphans of a deceased member of said association, who, on the date of his decease, was an active member of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire department and receive a "service pension" as provided for by section 11-1925, or prior to his decease had suffered a sickness or injury, and was receiving or was qualified to receive a "disability pension," as provided by section 11-1926, out of any money in relief association's "disability and pension fund," a monthly pension in an amount which shall be equal to one-half (½) of the monthly compensation last received by such deceased member for his services as an active member of the fire department in the city or town wherein such association has been formed. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. *However, the monthly compensation paid to a widow or orphan of an active member who becomes deceased after July 1, 1973, or an active member who elects to retire after July 1, 1973, shall in no event become less than one-half (½) the regular monthly salary paid to a confirmed active fireman of thet city as provided each and every year in the annual budget of that city.* Provided, that said pension shall be paid to the within named widow only so long as she remains unmarried, and further provided, that a widow of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and received a "service pension" as provided for by section 11-1925; or in those cases where the marriage was

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consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 11-1926. Provided further, that the pension herein provided for shall not be paid to the orphans of deceased firemen after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five ($75) dollars per month."

Approved: March 10, 1973.

CHAPTER NO. 268

An Act Amending Section 66-803, R.C.M. 1947, to Increase the Period of Time A Temporary License to Practice Cosmetology Is Valid and Increasing the License Fee From Two Dollars ($2) to Four Dollars ($4).

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-803, R.C.M. 1947, is amended to read as follows:

"66-803. **Requirements for practicing or teaching cosmetology or operating a school of cosmetology.** Before anyone may practice or teach cosmetology, or any person, firm, or copartnership, or corporation may operate a school of cosmetology, such person, firm, or copartnership or corporation must obtain a license of certificate of registration from the state board as hereinafter provided. To be eligible to take the examination to practice cosmetology the applicant must not be less than eighteen (18) years of age and a graduate of the eighth grade school and must be of good moral character. Such applicant must have completed a continuous course of study of at least two thousand (2,000) hours in a registered beauty school, which course of study has been distributed over a period of not less than ten (10) months or more than twelve (12) months, and has received a diploma from said beauty school, or must have completed the course of study in cosmetology prescribed by the state board of education, ex officio regents of the university of Montana, for northern Montana college. Such person so qualified must file with the secretary of the state board, a written application to take such examination accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the state board, and shall deposit with the secretary of the said board, the required examination fee and pass an examination as to his or her fitness to practice cosmetology.

Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he must:

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(1) Be a graduate of high school or possess an equivalent of a high school diploma recognized by the state superintendent of public instruction.

(2) Meet the following requirements:

(a) He must have an operator's license to practice cosmetology issued by the state of Montana, been actively engaged as a beauty operator for one (1) continuous year immediately prior to taking the examination, and have received a diploma from a registered school of cosmetology approved by the board certifying satisfactory completion of five hundred (500) hours of student teacher training; or

(b) He must have been actively engaged as a beauty operator for three (3) continuous years immediately prior to taking the teachers' examination.

The applicant must qualify by filing an application as prescribed by the board and by taking and passing the examination prescribed and given by the board. The license must be renewed annually as provided in section 66-816, R.C.M. 1947.

Anyone failing twice to pass an examination may not apply to retake the examination:

(1) Sooner than six (6) months after the date of the second failure; or

(2) Until he has taken two hundred (200) hours additional teacher training at a registered school of cosmetology approved by the board.

Provided, further, the board may grant to graduates of registered schools of this state upon the payment of a fee of *four* dollars *($4)* a temporary license authorizing such graduates to practice as an operator under the supervision of a licensed cosmetologist, in the practice of hairdressing and beauty culture, for a period of not to exceed ninety (90) days, or until the next examination is held by the board, *and the results are announced.* No such temporary license shall be issued except upon the presentation by the applicant of a certificate of graduation from a registered school of the state of Montana, and such temporary licenses shall not be renewable.

No person, firm or copartnership, or corporation shall operate a school for the purpose of teaching cosmetology for compensation unless a certificate of registration has been first obtained from the state board. Application for such certificate shall be filed with such board on such form as the board shall prescribe.

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No teacher or student teacher shall be permitted to practice cosmetology on the public in a school. Any school that enrolls student teachers for a course of student teacher training shall not have at any one (1) time more than one (1) student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

No school for teaching cosmetology shall be granted a certificate of registration unless it complies, or can comply, with the following requirements:

(1) Have in its employ a licensed teacher who shall be, at all times, in the immediate supervision of the work of said school, or such other teachers as the state board may determine is necessary for the proper conduct of said school. Provided, however, that there shall not be more than twenty-five (25) students to each such teacher.

(2) It shall possess such apparatus and equipment as the state board may determine is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(3) It shall maintain a school term of not less than two thousand (2,000) hours extending over a period of ten (10) consecutive months, and shall prescribe a course of practical training and technical instructions equal to the requirements for state board examinations, which course of training and technical instruction shall be prescribed by the state board.

(4) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(5) No owner, or person in charge of a school of cosmetology shall permit any person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, any room used, wholly or in part for a school of cosmetology.

(6) Certificates *of* registration may be refused, revoked, or suspended, as provided in section 66-811.

(7) The state board shall have the power to prescribe such further rules and regulations as they deem necessary for the proper conduct of schools of cosmetology.

(8) The state board shall require of the person, firm, copartnership, or corporation operating a school to furnish a good and sufficient bond in the amount of five thousand dollars ($5,000) and in a form and manner to be prescribed by the board.

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(9) No professional beauty shop shall be operated in connection with any school of cosmetology.

(10) The board may, by ruling, establish suitable curriculum for teacher's training in registered schools of cosmetology.

If a licensee shall contract a communicable disease, endangering the public health, the board shall, upon proof of same, cancel or suspend his or her license until such time as said licensee can secure a physician's certificate showing that such license is free from a communicable disease."

Approved: March 10, 1973.

CHAPTER NO. 269

An Act Amending Section 79-201, R.C.M. 1947; Adding A New General Fiscal Duty for the State Treasurer Relative To Deposit of Securities; and Providing An Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 79-201, R.C.M. 1947, is amended to read as follows:

"79-201. **State treasurer—general fiscal duties.** The state treasurer shall be the custodian of all moneys and securities of the state unless otherwise expressly provided by law, and it is the duty of the state treasurer:

1. To receive and account for all moneys belonging to the state, not expressly required by law to be received and kept by some other person.

2. To issue receipts which must be consecutively numbered beginning with number one at the commencement of each fiscal year for all sums of money which shall be paid into the treasury, and to deliver a copy of every such receipt to the person making such payment, the state auditor and the state controller.

3. To pay warrants out of the funds upon which they are drawn.

4. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid.

5. To keep an account of all moneys received and disbursed.

6. At the request of either house of the legislative assembly, or of any committee thereof, to give information in writing as to

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the condition of the treasury, or upon any subject relating to the duties of his office.

7. To discharge such other duties as may be imposed upon him by law.

8. Securities may be placed in safe keeping with banks subject to national supervision or Montana state examination and a safe keeping receipt may be accepted in lieu of the actual securities. Custody and control of repurchase agreements and mortgages shall be accomplished by the receipt of a confirmation of purchase."

Section 2. This act is effective on its passage and approval.

Approved: March 10, 1973.

CHAPTER NO. 270

An Act Authorizing the Department of Fish and Game to Establish Checking Stations and Requiring Hunters and Fishermen to Stop at Such Stations and Report Game in Their Possession.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The department of fish and game is authorized to establish checking stations where deemed necessary to inspect licenses of hunters and fishermen and to inspect any game animals, fish or fur-bearing animals in the possession of hunters and fishermen.

Section 2. Every person, upon the request of the director, or his authorized representative, or of any game warden, shall produce for inspection any current fish and game license which has been issued to such person and shall produce for inspection any game animals, birds, fish or fur-bearing animals in his possession. Hunters or fishermen entering or leaving areas for which checking stations have been established must stop and report if a checking station is on the hunter's or fishermen's route of travel, to or from the hunting or fishing area. Failure to stop and report at a checking station, when personnel are on duty, shall constitute a misdemeanor.

Approved: March 10, 1973.

CHAPTER NO. 271

An Act to Amend Section 31-129, R.C.M. 1947, Permitting a Traffic Education Student to Obtain an Instruction Permit; and Providing Limitations.

Be it enacted by the Legislative Assembly of the State of Montana:

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Section 1. Section 31-129, R.C.M. 1947, is amended to read as follows:

"31-129. **Instruction permits and temporary licenses.** (a) Any person satisfying the age requirements specified in 31-127 (1), may apply to the board for an instruction permit. The board may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of six (6) months when accompanied by a licensed operator or chauffeur who is occupying a seat beside the driver. *In addition, the board may issue such an instruction permit to any person who is at least fourteen and one-half (14½) years of age and who is successfully participating in a traffic education course approved by the Montana highway patrol and the superintendent of public instruction. Any instruction permit so issued shall be restricted to the operation of a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be further restricted to specific times and/or areas.*

(b) The board upon receiving proper application may in its discretion issue a *traffic education* permit effective for a school year or more restricted period to on applicant who is enrolled in a *traffic education* program approved by the board even though the applicant has not reached the legal age to be eligible for an operator's license. Such permit shall entitle the permitee when he has such a permit in his immediate possession to operate a motor vehicle only on a designated highway or within a designated area but only when an approved instructor is occupying a seat beside the permitee.

(c) The board may in its discretion issue a temporary driver's permit to an applicant for an operator's license permitting him to operate a motor vehicle while the board is completing its investigation and determination of all facts relative to such applicant's right to receive an operator's license. Such permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused."

Approved: March 10, 1973.

CHAPTER NO. 272

An Act to Amend Section 4-510, R.C.M. 1947, to Increase the Fees for Issuance of an Alcoholic Beverage Identification Card from

Fifty Cents ($.50) to One Dollar ($1); and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 4-510, R.C.M. 1947, is amended to read as follows:

"4-510. **Fee to be charged.** The county clerk and recorder shall charge and collect a fee of *one dollar ($1)* from the applicant at the time the application is prepared. This fee shall be transmitted to the Montana liquor control board along with the application and shall be used to defray the cost of administering and executing the provisions of this act. Any surplus shall revert to the general fund of the state of Montana."

Section 2. This act is effective on its passage and approval.

Approved: March 10, 1973.

CHAPTER NO. 273

An Act to Provide for the Establishment and Operation of a Joint City-County Library; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. A county and any city or cities within the county, by action of their respective governing bodies, may join in establishing and maintaining a joint city-county library under the terms of a contract agreed upon by all parties. The expenses of a joint city-county library shall be apportioned between or among the county and cities on such a basis as shall be agreed upon in the contract. The governing body of any city or county entering into a contract may levy a special tax as provided in section 44-220 for the establishment and operation of a joint city-county library. The treasurer of the county, or of a participating city within the county, as shall be provided in the contract, shall have custody of the funds of the joint city-county library, and the other treasurers of the county or cities joining in the contract shall transfer quarterly to him all moneys collected for the joint city-county library. The contract shall provide for the disposition of property upon dissolution of the joint city-county library.

Section 2. A joint city-county library shall be governed by a board of trustees composed of five (5) members chosen as specified in the contract, with terms not to exceed five (5) years. Trustees shall serve no more than two (2) full terms in succession. Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official

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duties may be paid from library funds. Trustees shall meet and elect a chairman, and such other officers as they deem necessary, for one (1) year terms. The board of trustees shall have the power and duties as specified in sections 44-213 through 44-225.

Section 3. This act is effective on its passage and approval.

Approved: March 10, 1973.

CHAPTER NO. 274

An Act to Amend Section 4-322, R.C.M. 1947, Forbidding Beer Wholesalers From Selling, Giving, Delivering or Distributing Beer to the Public.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 4-322, R.C.M. 1947, is amended to read as follows:

"4-322. **It shall be** *unlawful* **for any wholesaler to** *give,* **sell, deliver or distribute any beer purchased or acquired by him to the public."**

Approved: March 14, 1973.

CHAPTER NO. 275

An Act to be Cited as the Montana Unfair Trade Practices and Consumer Protection Act of 1973; Prohibiting Unfair Trade Practices and Providing Investigation Procedures and Penalties for Violations of the Act.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. As used in this act:

(1) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(2) "Trade" and "commerce" means the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value, wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of the state.

(3) "Documentary material" means the original or a copy

of any book, record, report, memorandum, paper, communication, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(4) "Examination" of documentary material includes the inspection, study, or copying of such material, and the taking of testimony under oath or acknowledgment in respect to any such documentary material or copy thereof.

(5) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.

(6) "Department'' means the department of business regulation created in section 82A-401.

Section 2. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

Section 3. (1) It is the intent of the legislature that in construing section 2 of this act due consideration and weight shall be given to the interpretations of the federal trade commission and the federal courts relating to section 5 (a) (1) of the Federal Trade Commission Act [15 U.S.C., 45 (a) (1)], as amended; and

(2) The department may make rules and regulations interpreting the provisions of section 2 of this act. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the federal trade commission and the federal courts in interpreting the provisions of section 5 (a) (1) of the Federal Trade Commission Act [15 U.S.C., 45 (a) (1)], as amended.

Section 4. Nothing in this act shall apply to:

(1) actions or transactions permitted under laws administered by the Montana public service commission acting under statutory authority of this act or the United States.

(2) acts done by the retail merchants, publisher, owner, agent, or employee of a newspaper, periodical or radio or television station or advertising agency in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and did not have a direct financial interest in the advertised product or service.

(3) National advertising shall be exempt from this act.

Section 5. Whenever the department has reason to believe that any person is using, has used, or is about to knowingly use

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any method, act or practice declared by section 2 of this act to be unlawful, and that proceeding would be in the public interest, the department may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act or practice, upon the giving of appropriate notice to that person. The notice must state generally the relief sought and be served in accordance with section 13 of this act in at least twenty (20) days before the hearing of the action. The action may be brought in the district court in which such person resides or has his principal place of business, or, with consent of the parties, may be brought in the district court of Lewis and Clark County. The courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this act, and such injunctions shall be issued without bond.

Section 6. The court may make such additional orders or judgments as may be necessary to restore to any person any moneys or property, real or personal, which may have been acquired by means of any practice in this act declared to be unlawful, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

Section 7. When a receiver is appointed by the court pursuant to this act, he has the power to sue for, collect, receive and take into his possession all goods and chattels, rights and credits, moneys and effects, lands and tenements books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this act, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use of employment of any unlawful practices and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required.

Section 8. (1) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another per-

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son of a method, act or practice declared unlawful by section 2 of this act, may bring an individual, but not a class action under rules or civil procedure in the district court in which the seller or lessor resides or has his principal place of business or is doing business, to recover actual damages or two hundred dollars ($200), whichever is greater. The court may, in its discretion, award up to three (3) times the actual damages sustained and may provide such equitable relief as it deems necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.

(4) Any permanent injunction, judgment or order of the court made under section 5 of this act shall be prima facie evidence in an action brought under section 8 of this act that the respondent used or employed a method, act or practice declared unlawful by section 2 of this act.

Section 9. In the administration of this act, the department may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the act from any person who has engaged or was about to engage in any such method, act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of district court in which the alleged violator resides or has his principal place of business, or the district court of Lewis and Clark County. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters thus closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to section 5.

Section 10. (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or about to engage in, any act or practice declared to be unlawful by this act, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investi-

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gative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand, or within twenty (20) days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court where the person served with the demand resides or has his principal place of business or in the district court of Lewis and Clark County.

Section 11. To accomplish the objectives and to carry out the duties prescribed by this act, the department, in addition to other powers conferred upon it by this act, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe forms and promulgate rules and regulations as may be necessary, which rules and regulations shall have the force of law; provided that none of the powers conferred by this act may be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture; and provided further that information obtained pursuant to the powers conferred by this act shall not be made public or disclosed by the department or its employees beyond the extent necessary for law enforcement purposes in the public interest.

Section 12. Service of any notice, demand or subpoena under this act shall be made personally within this state, but if such cannot be obtained, substitute service may be made in the manner provided in the Montana Rules of Civil Procedure.

Section 13. If any person fails or refuses to file any statement or report, or obey any subpoena or investigative demand issued by the department, the department may, after notice, apply to the district court and, after hearing thereon, request an order:

(1) granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

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(2) vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(3) granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

Section 14. (1) Any person who violates the terms of an injunction issued under section 5 of this act shall forfeit and pay to the state a civil penalty of not more than ten thosuand dollars ($10,000) per violation. For the purposes of this section, the district court issuing an injunction retains jurisdiction, and the cause continued, and in such cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In any action brought under section 5 of this act, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by section 2 of this act, the department, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than five hundred dollars ($500) per violation.

(3) Any person who engages in a fraudulent course of conduct declared unlawful by section 2 of this act shall, upon conviction, be fined not more than two thousand dollars ($2,000), imprisoned for not more than one (1) year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this act.

(4) For purposes of this section, a willfull violation occurs when the party committing the violation knew or should have known that his conduct was a violation of section 2 of this act.

Section 15. Upon petition by the department, the district court may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under section 5 of this act.

Section 16. It is the duty of the county attorney to lend to the department such assistance as the department may request in the commencement and prosecution of actions pursuant to this act, or, the county attorney may institute and prosecute actions in the same manner as provided for the department. If an action

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is prosecuted by the county attorney alone, he shall notify the department as to the nature of the action and the parties to the action within thirty (30) days of the filing of the action. The county attorney shall make a report thereon to the department within thirty (30) days of the final disposition of the matter.

Section 17. The county attorney in first and second class counties may designate an employee to act as a full-time investigator.

Section 18. If any provision of this act is declared unconstitutional, or the application to any person or circumstances is held invalid, the constitutionality of the remainder of the act and its applicability to other persons and circumstances is not affected.

Section 19. This act shall be cited as the "Montana Unfair Trade Practices and Consumer Protection Act of 1973."

Approved: March 15, 1973.

CHAPTER NO. 276

An Act to Establish Procedures for the Disposition of Contributions Made to the Fire Department Relief Association Funds By Unmarried Members.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. If any fireman shall die not leaving a widow or orphan, the fire department relief association shall compute the total contributions made to the fund by said deceased member, and if the deceased member has designated, in writing, to the association a beneficiary to whom such funds shall be paid, the association shall issue a warrant for said sums payable to that beneficiary; if the deceased member has not nominated a beneficiary, said contributions shall be paid to his estate.

Approved: March 15, 1973.

CHAPTER NO. 277

An Act to Amend Section 71-1516, R.C.M. 1947, to Include Adopted Children Who Have Been Defined As "Hard-to-Place" Within Eligibility Requirements For Medical Assistance; and to Provide Financial Assistance to the Adoptive Parents of "Hard-to-Place" Children.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Purpose. It is the purpose of this act to encourage and promote the adoption of children who are difficult to place in adoptive homes. It is the intent of the legislative assembly to offer prospective adoptive parents information concerning relinquished children, information and assistance in completing the adoption process, and financial aid which may be required to enable them to adopt a "hard-to-place" child.

Section 2. Section 71-1516, R.C.M. 1947, is amended to read as follows:

"71-1516. **Eligibility requirements for medical assistance.** Medical assistance shall be granted in behalf of all persons who reside in the state of Montana, including residents temporarily absent from the state and who meet any of the following requirements:

(1) Who receive all or part of their income from the federally aided public assistance programs: old-age assistance, aid to the blind, aid to dependent children, and aid to the permanently and totally disabled;

(2) All persons, who upon application, would be eligible for financial assistance under any one of the federally aided programs referred to above;

(3) All persons who would be entitled to financial assistance under one of the federally aided categories except that they do not meet the durational residence requirements or relative responsibility requirements of any of the public assistance programs above enumerated;

(4) Persons in medical institutions who, if they were no longer in such institution, would be eligible for financial assistance under one of the above programs;

(5) All children under twenty-one who meet the conditions of eligibility in the state's plan for aid to dependent children, other than with respect to school attendance;

(6) All children under twenty-one who are in foster care under the supervision of the state.

(7) All children under twenty-one (21) who were in foster care under the supervision of the state, and who have been adopted as "hard-to-place" children."

Section 3. Definitions. For the purposes of this act, a "hard-to-place child" is a child who is disadvantaged because of ethnic

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background, race, color or language; is handicapped because of physical, mental or emotional defects; is three (3) years of age or older; or is a sibling of any of the foregoing. If such "hard-to-place child" is under the permanent custody of any licensed state welfare agency other than the department of social and rehabilitation services, that agency must have exhausted all possible attempts for permanent adoption including reference to the department of social and rehabilitation services.

Section 4. The state department of social and rehabilitation services shall establish, administer and regulate the program of subsidized adoption established by this act. The department shall keep such records as are necessary to evaluate the program and shall report annually to the governor concerning the number of children adopted under the program, the cost of the program and any other pertinent information.

Section 5. The department shall establish rules and regulations concerning financial assistance in addition to the medical assistance provided by section 71-1516 to persons who adopt "hard-to-place" children who were, immediately prior to their adoption, legal wards of the department. The amount of the assistance may not exceed the cost of the care of the child in a foster home. Special-purpose assistance may be allowed in the event a child requires a special service, but such assistance may not exceed the cost of similar services provided by the department for children who are legal wards of the department.

Section 6. The county in which reside the adoptive parents of a "hard-to-place" child shall reimburse the department for one-half (½) of the assistance provided to the adoptive parents exclusive of the federal share of such assistance.

Approved: March 15, 1973.

CHAPTER NO. 278

An Act to Amend Section 89-105, R.C.M. 1947, to Require Water User Approval Before Capital Improvements Are Made On Water Projects In Cases Where Construction Estimate Is Five Percent (5%) or More Above the Original Estimate, and Providing An Exception For Emergencies.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-105, R.C.M. 1947, is amended to read as follows:

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"89-105. **Power of board to construct works and to act beyond jurisdiction.** The board is hereby authorized to construct, whenever it shall deem such construction expedient, any public works as hereinabove defined, the cost of such construction to be paid wholly by means of or with the proceeds of revenue bonds hereinafter authorized or of a grant to aid in financing such construction from the United States of America or any instrumentality or agency thereof and of other funds provided under the authority of this act. Before constructing any project, the *department* shall make estimates of the cost of the project, of the cost of maintaining, repairing and operating the same, and of the revenues to be derived therefrom, and no such project shall be constructed unless, according to such estimates, the revenues to be derived therefrom will be sufficient to pay the cost of maintaining, repairing and operating the same, and to pay the principal and interest of revenue bonds which may be issued for the cost of such project; provided, however, that in connection with the issuance of any of such bonds, the failure of the board to make the estimates required by this section or to make same in proper form shall in no way affect the validity or enforceability of any such bonds or of the trust indenture, resolution or other security therefor.

However, should the bid of the lowest responsible bidder on any capital improvement associated with public works as defined in this section exceed the department estimates of the cost of the improvements by more than five percent (5%), the department shall obtain approval from the works user association before the bid is accepted; however, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require such approval.

The purpose of this act is to meet, so far as possible, a state-wide need for the conservation and use of water, through the construction and operation of projects designed for such purposes. The board is therefore empowered to make such investigations as may be necessary to plan and carry out a comprehensive state-wide program of water conservation. The projects to be finally constructed shall qualify as parts of such state-wide program and shall be approved by the board upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation, maintenance and repair and the amortization of the cost of the construction; provided, however, that the failure of the board to determine such prospective ability of a project shall in no way affect the validity or enforceability of any of such bonds or of the trust indenture, resolution, or other security therefor.

The board may exercise any of its powers:

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(a) In any adjoining state, unless the exercise of such power is not permitted under the laws of such state or of the United States of America.

(b) In any national forest or public domain of the United States of America adjoining, or located in, the state of Montana, unless the exercise of such powers is not permitted under the laws of the United States of America.

(c) In any adjoining country unless the exercise of such powers is not permitted under the laws of such country or of the United States or under the treaties between such country and the United States; provided that the provisions of sections 89-120, 89-121, 89-122 and 89-124 shall not apply to waters appropriated and located outside the state so long as such waters are located outside the state or to rights in waters appropriated and located outside the state, and that all such waters shall be appropriated and all rights in such waters acquired by the board in compliance with the laws of the jurisdiction in which such waters are located and appropriated and with the laws of the United States."

Approved: March 15, 1973.

CHAPTER NO. 279

An Act Amending Section 43-205, R.C.M. 1947, Providing That Both Session of the Legislative Assembly Shall Meet on the First Monday Except When it is January 1, Then They Shall Meet on the First Wednesday in January.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 43-205, R.C.M. 1947, is amended to read as follows:

"43-205. **Time and place of meeting.** *Each session of the* legislative assembly shall meet at the seat of government, at twelve *(12)* noon, on the first Monday *except when it is January 1st, then they shall meet on the first Wednesday* of January *of* each year, and at other times when convened by the governor *or by a written request of a majority of the members or, when the legislative assembly is in session, by a recorded vote of a majority of the members.*"

Approved: March 15, 1973.

CHAPTER NO. 280

An Act Amending Section 75-5933, R.C.M. 1947, Providing for the Recommendation of the District Superintendent, the County

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High School Principal, or Other Principal, as the School District Trustees May Deem Necessary Before Hiring or Dismissing Personnel.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-5933, R.C.M. 1947, is amended to read as follows:

"75-5933. **Powers and duties.** As prescribed elsewhere in this Title, the trustees of each district shall have the power and it shall be its duty to perform the following duties or acts;

(1) employ or dismiss a teacher, principal or *other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board may deem necessary, accepting or rejecting such recommendation as the trustees shall in their sole discretion determine.* in accordance with the provisions of the school personnel chapter of this Title;

(2) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this Title;

(3) call, conduct and certify the elections of the district in accordance with the provisions of the school election chapter of this Title;

(4) participate in the teachers retirement system of the state of Montana in accordance with the provisions of the teachers retirement system chapter of this Title;

(5) participate in district boundary change actions in accordance with the provisions of the districts chapter of this Title;

(6) organize, open, close or acquire isolation status for the schools of the district in accordance with the provisions of the school organization chapter of this Title;

(7) adopt and administer the annual budget or an emergency budget of the district in accordance with the provisions of the school budget system chapter of this Title;

(8) conduct the fiscal business of the district in accordance with the provisions of the school financial administration chapter of this Title;

(9) establish the ANB, foundation program, permissive levy, additional levy, cash reserve and state impact aid amount for the general fund of the district in accordance with the provisions of the general fund chapter of this Title;

(10) establish, maintain, budget and finance the transporta-

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tion program of the district in accordance with the provisions of the transportation chapter of this Title;

(11) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds chapter of this Title;

(12) when applicable, establish, financially administer and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, post-secondary vocational-technical center fund, nonoperating fund, school food services fund, miscellaneous federal program fund, building fund, housing and dormitory fund, traffic education fund and interlocal co-operative agreement fund in accordance with the provisions of the other school funds chapter of this Title;

(13) when applicable, administer any interlocal co-operative agreement, gifts, legacies or devises in accordance with the provisions of the miscellaneous financial chapter of this Title;

(14) hold in trust, acquire and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities chapter of this Title;

(15) operate the schools of the district in accordance with the provisions of the school calendar chapter of this Title;

(16) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education and special education chapters of this Title;

(17) establish and maintain the school food services of the district in accordance with the provisions of the school food services chapter of this Title; and

(18) perform any other duty and enforce any other requirements for the government of the schools prescribed by this Title, the policies of the board of education or the rules and regulations of the superintendent of public instruction."

Approved: March 15, 1973.

CHAPTER NO. 281

An Act to Amend Section 75-7204, R.C.M. 1947, to Pay Each School District's Obligation For Employer Contributions to the Federal Social Security System from the School District's Retirement Fund.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7204, R.C.M. 1947, is amended to read as follows:

"75-7204. **Retirement fund.** The trustees of any district employing personnel who are members of the teachers retirement system or the public employees retirement system, *or who are covered by any federal social security system requiring employer contributions* shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers retirement system shall be calculated in accordance with section 75-6207. The district's contribution for each employee who is a member of the public employees retirement system shall be calculated in accordance with section 68-603, R.C.M., 1947. *The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation.*

The trustees of any district required to make a contribution to *any such* system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this Title.

When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(1) determining the sum of the moneys available to reduce the retirement fund levy requirement by adding:

(a) any anticipated moneys that may be realized in the retirement fund during the ensuing school fiscal year; and

(b) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve shall not be more than thirty-five per cent (35%) of the final retirement fund budget for the ensuing school fiscal year and shall be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(2) subtracting the total of the moneys available for reduction of the levy requirement as determined in subsection (1) from the

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budgeted amount for expenditures in the final retirement fund budget.

The county superintendent shall total the net retirement fund levy requirements *separately for all elementary school districts and* all high school districts of the county, including any prorated joint district levy requirements, and shall report *each* such levy requirement to the county commissioners on the second Monday of August as the *respective county levy requirements for elementary district and* high school district retirement funds. The county commissioners shall fix and set such county levy in accordance with section 75-6717.

The net retirement fund levy requirement for a joint *elementary district or a joint* high school district shall be prorated to each county in which a part of such district is located in the same proportion as the *district* ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in section 75-6721."

Approved: March 15, 1973.

CHAPTER NO. 282

An Act Providing for the Nonexempted Employments Covered by the Workmen's Compensation Act; and Providing Criminal Penalties; and Repealing Section 92-207, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-207.1, R.C.M. 1947, which reads as follows:

92-207.1. **Employments covered.** This act applies to all public employment and to all private employment not expressly exempted by section 92-202.1. If any employer shall fail to make said election, in the time and in the manner herein prescribed, he shall be guilty of a misdemeanor, and punishable by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600) or imprisonment in the county jail for a period not to exceed six (6) months or by both such fine and imprisonment. A failure to provide compensation for each employee shall be deemed a separate offense for the purposes of this act.

Section 2. Section 92-207, R.C.M. 1947, is repealed.

Approved: March 15, 1973.

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CHAPTER NO. 283

An Act Amending Section 26-202.3, R.C.M. 1947, Defining Resident For Purposes of the Fish and Game Act; Eliminating the Requirement of Being a United States Citizen.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 26-202.3, R.C.M. 1947, is amended to read as follows:

"26-202.3. **Defining resident.** That in determining a resident for the purpose of issuing resident fishing and hunting licenses, the following provisions shall apply:

(1) That members of the armed forces of the United States or members of the armed forces of foreign governments attached to the armed forces of the United States, who are assigned to duty in Montana, and members of their immediate families, and after a period of thirty (30) days within Montana, upon presenting assignment orders emanating from the proper unit commander, shall be considered residents for the purpose of this act. The thirty (30) day residence requirement is waived in time of war.

(2) Any *person* who has been a resident of the state of Montana, as defined in section 83-303, for a period of six (6) months immediately prior to making application for said license shall be eligible to receive a resident hunting or fishing license.

(3) Any enrollee of a job corps camp located within the state of Montana shall, after a period of thirty (30) days within Montana, be considered a resident for the purpose of making application for a fishing license as long as he remains an enrollee in a Montana camp."

Approved: March 15, 1973.

CHAPTER NO. 284

An Act Relating to the Redemption of County, City, Town and School District Bond Issues Before Maturity; and Amending Sections 11-2304, 16-2011 and 75-7107, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-2304, R.C.M. 1947, is amended to read as follows:

"11-2304. **Terms of bonds—rates of interest.** No bonds for any purpose shall be issued for a longer term than twenty (20)

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years, and when bonds are issued for the purpose of refunding bonds theretofore issued and outstanding, such bonds shall not be issued for a longer term than ten (10) years, provided that if the unexpired term of the bonds to be refunded shall be more than ten (10) years, then in such event, the refunding bonds may be issued for such unexpired term. All bonds issued for a longer term than five (5) years *shall* be redeemable at the option of the city or town on any interest payment date *after one-half (½) of the term for which they were issued has expired,* and it shall be recited in the bonds. The maximum rate of interest which any bond may bear shall be seven per cent (7%) per annum and shall be payable semiannually."

Section 2. Section 16-2011, R.C.M. 1947, is amended to read as follows:

"16-2011. **Term of bonds—power to redeem—maximum interest.** No bonds issued for any of the purposes designated in subdivisions (a), (b), (c), of section 16-2008, shall be for a longer term than twenty (20) years; no bonds issued for any of the purposes designated in subdivisions (d), or (e), of section 16-2008, shall be for a longer term than ten (10) years.

The following limitations as to term shall apply to all bonds issued under subdivision (f) of section 16-2008; No bonds shall be issued for a longer term than ten (10) years, provided, that if the unexpired term of the bonds to be refunded shall be more than ten (10) years then, in such event, the refunding bonds may be issued for such unexpired term; or if such ten (10) year term will require an annual tax levy for payment of such refunding bonds exceeding ten (10) mills on all property subject to taxation in the county, then, in such event, the term may be so extended as to reduce the required annual levy to ten (10) mills, provided, however, that the term shall not under any circumstances exceed twenty (20) years.

No bonds issued for any of the purposes designated in subdivision (g) of section 16-2008 shall be for a longer term than five (5) years.

Bonds issued for any of the purposes designated in subdivisions (h) and (i) of section 16-2008 shall not be for a longer term than will be required to repay the bonds with interest through a tax levy of ten (10) mills on all the property within the county subject to taxation and the term shall not exceed *twenty* (20) years. The length of the term required shall be estimated and calculated by the board of county commissioners based upon the percentage of valuation of the property upon which taxes are levied and paid within such county as ascertained from the last completed assess-

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ment for state and county taxes taking into account probable changes in the taxable valuation and losses in tax collections, provided, however, that irrespective of any miscalulation by the county commissioners in fixing the term of the bonds the county must from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

All bonds issued for a longer term than five (5) years shall be redeemable at the option of the county on any *interest* payment date *after one-half (½) of the term for which they were issued has expired* and *it* shall be so stated on the face of the bonds. The maximum rate of interest which any of such bonds may bear shall be seven per cent (7%) per annum and shall be payable semiannually."

Section 3. Section 75-7107, R.C.M. 1947, is amended to read as follows:

"75-7107. **Limitation of term and interest on bonds, and timing for redemption of bonds.** School district bonds shall not be issued for a term longer than twenty (20) years except that bonds issued to refund or redeem outstanding bonds shall not be issued for a longer term than ten (10) years unless the unexpired term of the bonds to be refunded or redeemed is in excess of ten (10) years in which case the refunding or redeeming bonds may be issued for such unexpired term. All bonds issued for a longer term than five (5) years shall be redeemable at the option of the school district on any interest payment date *after one-half (½) of the term for which they were issued has expired* and *it* shall be so stated on the face of the bonds. The interest shall not exceed seven per cent (7%) per annum and shall be payable semiannually."

Approved: March 15, 1973.

CHAPTER NO. 285

An Act to Amend Section 82A-1602, R.C.M. 1947, to Change the Name of the Board of Chiropodists to the State Board of Podiatry Examiners and to Change the Name of the Board of Medical Doctors to the Montana State Board of Medical Examiners.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82A-1602, R.C.M. 1947, is amended to read as follows:

"82A-1602. **Department—agencies transferred to.** The following agencies are continued, are transferred to the department for

administrative purposes only as prescribed in section 82A-108 of this act, and are renamed as indicated:

(1) Abstracters board of examiners, created in Title 66, chapter 21, R.C.M. 1947, renamed the board of abstracters. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the abstracters board of examiners means the board of abstracters.

(2) State board of public accountancy, created in Title 66, chapter 18, R.C.M. 1947, renamed the board of public accountants. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of public accountancy means the board of public accountants.

(3) Board of architectural examiners, provided for in Title 66, chapter 1, R.C.M. 1947, renamed the board of architects. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of architectural examiners means the board of architects.

(4) State athletic commission, created in Title 82, chapter 3, R.C.M. 1947, renamed the board of athletics. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state athletic commission means the board of athletics.

(5) Board of barber examiners, created in Title 66, chapter 4, R.C.M. 1947, renamed the board of barbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of barber examiners means the board of barbers.

(6) *State board of chiropody medical examiners or the board of chiropodists created in Title 66, chapter 6, R.C.M. 1947, and renamed in section 1, chapter 272, Laws of Montana, 1971, is renamed the state board of podiatry examiners.* Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropody medical examiners *or the board of chiropodists* means the *state board of podiatry examiners.*

(7) State board of chiropractic examiners, created in Title 66, chapter 5, R.C.M. 1947, renamed the board of chiropractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropractic examiners means the board of chiropractors.

(8) Montana state examining board of cosmetology, created in Title 66, chapter 8, R.C.M. 1947, renamed the board of cosmetologists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state examining board of cosmetology means the board of cosmetologists.

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(9) State board of dental examiners of the state of Montana, created in Title 66, chapter 9, R.C.M. 1947, renamed the board of dentists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of dental examiners of the state of Montana means the board of dentists.

(10) State electrical board, created in Title 66, chapter 28, R.C.M. 1947, renamed the board of electricians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state electrical board, except the references relating to the functions of making inspections of electrical installations and issuing tags and charging fees therefor or of establishing an electrical code, transferred to the department of law enforcement and public safety in chapter 12 of this act, means the board of electricians.

(11) State board of registration for professional engineers and land surveyors, created in Title 66, chapter 23, R.C.M. 1947, renamed the board of professional engineers and land surveyors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of registration for professional engineers and land surveyors means the board of professional engineers and land surveyors.

(12) Montana board of hearing aid dispensers, created in Title 66, chapter 30, R.C.M. 1947, renamed the board of hearing aid dispensers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana board of hearing aid dispensers means the board of hearing aid dispensers.

(13) Montana horse racing commission, created in Title 62, chapter 5, R.C.M. 1947, renamed the board of horse racing. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana horse racing commission means the board of horse racing.

(14) State board of massage examiners, created in Title 66, chapter 29, R.C.M. 1947, renamed the board of masseurs. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of massage examiners means the board of masseurs.

(15) *Montana state board of medical examiners, created in Title 66, chapter 10, R.C.M. 1947, and renamed the board of medical doctors in section 1, chapter 272, Laws of Montana, 1971, is renamed the Montana state board of medical examiners.* Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of medical examiners *or the board of medical doctors* means the *Montana state board of medical examiners.*

(16) State board of morticians, created in Title 66, chapter

27, R.C.M. 1947, renamed the board of morticians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of morticians means the board of morticians.

(17) State board of examiners for nursing home administrators, created in Title 66, chapter 31, R.C.M. 1947, renamed the board of nursing home administrators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of examiners for nursing home administrators means the board of nursing home administrators.

(18) Montana state board of nursing, created in Title 66, chapter 12, R.C.M. 1947, renamed the board of nurses. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of nursing means the board of nurses.

(19) Montana state board of examiners in optometry, created in Title 66, chapter 13, R.C.M. 1947, renamed the board of optometrists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of examiners in optometry means the board of optometrists.

(20) State board of osteopathic examiners, provided for in Title 66, chapter 14, R.C.M. 1947, renamed the board of osteopaths. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of osteopathic examiners means the board of osteopaths.

(21) Montana state board of pharmacy, created in Title 66, chapter 15, R.C.M. 1947, renamed the board of pharmacists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of pharmacy means the board of pharmacists.

(22) Board of plumbing examiners (or the state plumbing board), provided for in Title 66, chapter 24, R.C.M. 1947, renamed the board of plumbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of plumbing examiners or the state plumbing board means the board of plumbers.

(23) Montana real estate commission, created in Title 66, chapter 19, R.C.M. 1947, renamed the board of real estate. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana real estate commission means the board of real estate.

(24) State board of veterinary medical examiners, created in Title 66, chapter 22, R.C.M. 1947, renamed the board of veterinarians. Unless inconsistent with this act, any reference in the

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Revised Codes of Montana, 1947, to the state board of veterinary medical examiners means the board of veterinarians.

(25) Board of certification for water and waste water operators, provided for in Title 69, chapter 59, R.C.M. 1947, renamed the board of water and waste water operators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of certification for water and waste water operators means the board of water and waste water operators.

(26) Water well contractors' examining board of the state of Montana, created in Title 66, chapter 26, R.C.M. 1947, renamed the board of water-well contractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the water-well contractors' examining board of the state of Montana means the board of water-well contractors."

Approved: March 15, 1973.

CHAPTER NO. 286

An Act to Repeal the "Oleomargarine Law" and Other References to Oleomargarine; Repealing Sections 3-24-125, 27-501 through 27-503, 27-505, and 27-507 through 27-523, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Sections 3-24-125, 27-501 through 27-503, 27-505, and 27-507 through 27-523, R.C.M. 1947, are repealed.

Approved: March 15, 1973.

CHAPTER NO. 287

An Act Creating a New Section Providing When Justices of the Peace Shall Retain or Remit Fees.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 25-311, R.C.M. 1947, which reads as follows:

25-311. Justices of the peace shall remit to the county treasurer the fees as set forth in section 25-310; provided however, that in all cases justices of the peace may retain the miscellaneous fees provided for in section 25-304.

Approved: March 15, 1973.

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CHAPTER NO. 288

An Act to Amend Section 66-603, R.C.M. 1947, Relating to the Podiatry Examiners to Correct an Error and Inconsistency in the Section Changing the Words Two (2) Chiropodists to Three (3) Podiatrists to Make the Section Consistent and to Provide that Chiropodist and Podiatrist are the same Profession.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-603, R.C.M. 1947, is amended to read as follows:

"66-603. *Podiatry* **examiners—examinations—qualifications—schools—fees—nonresident practitioners.** (1) There is hereby created a state board of *podiatry* examiners consisting of one physician to be selected at its annual meeting by the state board of medical examiners from its membership, the secretary of the state board of medical examiners, and *three (3) podiatrists* to be selected and to serve as hereinafter provided. The Montana association of *podiatrists* shall select six (6) *podiatrists* from its membership, who shall be residents of and shall have engaged in the active practice of *podiatry* for at least two (2) years in this state, and shall be of high integrity and ability. Within thirty (30) days from and after the selection of said six (6) *podiatrists* as aforesaid, the governor of Montana shall appoint three (3) of their number and so designate the term of office of each, that the term of office of one member shall expire in one (1) year, one in two (2) years, and one (1) in three (3) years, from date of appointment; annually thereafter, the governor shall appoint one member who shall be a licensed *podiatrist* possessing the qualifications hereinbefore mentioned who shall serve for a period of three (3) years or until his successor shall have been appointed by the governor. Should any vacancy arise on aforesaid board before the expiration of the term of office of any of the *podiatrist* members of said board, such vacancy shall be filled by appointment by the governor wthin thirty (30) days, such appointee to possess the qualifications heretofore stated, and to be selected from those remaining of the said six (6) *podiatrists* theretofore selected by the Montana association of *podiatrists* unless said number of selected *podiatrists* shall have been exhausted.

(2) Examinations shall be held semiannually at such places and time as the state board of *podiatry* examiners shall direct. On and after the date of the taking effect of this act, all persons who may wish to begin practice of *podiatry* in this state, shall make application upon a blank form authorized and furnished by said state board of medical examiners, for a license to practice *podiatry*. This

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application shall be granted to such applicants, after they shall have furnished satisfactory proof of good moral character, of having attained high school graduation or its equivalent and of having at least two (2) years of instruction in an accredited school of *podiatry* recognized as being in good standing by the Montana board of *podiatry* examiners, but after June 1, 1941, no school of *podiatry* shall be accredited by said board which does not require for graduation four (4) years of instruction in the study of *podiatry*. All *podiatrists*, actively engaged in the practice of *podiatry* one (1) or more years and licensed by the state board of medical examiners, prior to April 1, 1939, whether meeting these requirements or not, shall, upon furnishing proof thereof to said board of *podiatry* examiners be entitled to a license without examination. A license without written examination may be issued to *podiatrists* of other states maintaining equal statutory requirements for the practice of *podiatry* and extending the same reciprocal privilege to this state provided further that they have had a valid license for at least two (2) years in that state prior to filing for reciprocal privilege, and by payment of fifty dollars ($50) to the secretary of the board of medical examiners. *Wherever the appellation chiropodist or chiropody appears in the Montana statute it shall mean podiatrist or podiatry.''*

Approved: March 15, 1973.

CHAPTER NO. 289

An Act Creating a New Section to Provide For Fees of Justices of the Peace in Criminal Actions.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 25-310, R.C.M. 1947, which reads as follows:

25-310. The following fees shall be collected by justices of the peace which shall be collected from fines and forfeitures received by justices of the peace:

(1) for all services rendered where there is a plea of guilty, or forfeiture of a bond, not vacated, seven dollars and fifty cents ($7.50);

(2) for all services rendered where there is a trial, fifteen dollars ($15).

Approved: March 15, 1973.

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CHAPTER NO. 290

An Act to Amend Section 32-2610, R.C.M. 1947, to Allow the Department of Highways to Increase the Expenditures Made In Any Financial District to the Extent of Twenty-five Percent (25%) More Than the Amount of Money Allocated to Such District.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 32-2610, R.C.M. 1947, is amended to read as follows:

"32-2610. **Increases in expenditures.** (1) The commission may increase the expenditures made in any financial district to the extent of:

(a) *Twenty-five percent (25%)* more than the amount of money allocated to such district in the latest year for the federal-aid primary system or the federal-aid secondary system.

(b) One hundred per cent (100%) more than the amount of money allocated to such district in the latest year for the federal-aid interstate highway system.

(2) The allocation of available state construction funds to any district for the next succeeding fiscal year shall be decreased by an amount equal to any increased expenditures."

Approved: March 15, 1973.

CHAPTER NO. 291

An Act to Amend Section 31-119, R.C.M. 1947, Revising and Adding to the Definition of Certain Words As Applied to the Driver Licensing Act.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 31-119, R.C.M. 1947, is amended to read as follows:

"31-119. **Vehicle—motor vehicle—farm tractor—school bus—***bus—motorcycle.* (a) Vehicle. Every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(b) Motor vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from

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overhead trolley wires, but not operated upon rails, *excluding motorcycles.*

(c) Farm tractor. Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(d) School bus. Every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(e) Bus. Every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(f) Motorcycle. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor."

Approved: March 15, 1973.

CHAPTER NO. 292

An Act Amending Sections 10-901, 10-902, and 10-903, R.C.M. 1947, Changing the Declaration of Policy in Regard to Reporting of Cases of Child Neglect or Abuse By Providing That the Reports Are Made to the Department of Social and Rehabilitation Services, Its Local Affiliate and the County Attorney; Expanding the Persons Required to Report; Changing the Definition By Including With Physical Abuse, Sexual and Psychological Abuse.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 10-901, R.C.M. 1947, is amended to read as follows:

"10-901. **Declaration of policy.** It is the policy of this state to provide for the protection of children *whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever possible."*

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Section 2. Section 10-902, R.C.M. 1947, is amended to read as follows:

"10-902. **Reports.** *Any physician who examines, attends or treats a person under the age of majority, or any nurse, teacher, social worker, attorney or law enforcement officer or any other person who has reason to believe that a child has had serious injury or injuries inflicted upon him or her as a result of abuse or neglect, or has been willfully neglected, shall report the matter promptly to the department of social and rehabilitation services, its local affiliate, and the county attorney of the county where the child resides. This report shall contain the names and addresses of the child and his or her parents or other persons responsible for his or her care; to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and the facts which led the person reporting to believe that the child has suffered injury or injuries, or willful neglect, within the meaning of this act."*

Section 3. Section 10-903, R.C.M. 1947, is amended to read as follows:

"10-903. **Action on reporting.** If from said report it shall appear that the child suffered such injury or injuries or willful neglect, *the social worker shall conduct a thorough investigation into the home of the child involved and into the circumstances surrounding the injury of the child and into all other matters which, in the discretion of the social worker, shall be relevant and material to the investigation. If from the investigation it shall appear that the child suffered such injury or injuries or willful neglect, the department shall provide protective services to protect the child and preserve the family. The department will advise the county attorney of its investigation.*

The investigating social worker shall also furnish a written report to the department of social and rehabilitation services who shall have the responsibility of maintaining a central registry on child abuse or willful neglect cases."

Approved: March 15, 1973.

CHAPTER NO. 293

An Act Amending Sections 69-6004, 69-6005 and 69-6006, R.C.M. 1947, to Provide Certain Notice Requirements Prior to Creation of Refuse Disposal Districts.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 69-6004, R.C.M. 1947, is amended to read as follows:

"69-6004. **Action by city or town council—effect—notice.** *(1)* Upon passage of such resolution of intention, *the* commissioners shall transmit a copy of the same to the executive head of any incorporated city or town within the proposed district for consideration by such city or town council, and if the city or town council shall by resolution concur, in the resolution of the commissioners, a copy of the resolution of concurrence shall be transmitted to the commissioners. If the incorporated city or town council does not concur in the resolution of the commissioners, the commissioners shall have no authority to include said town or city in the district, but may continue to develop the district, but excluding said town or city.

(2) The commissioners must give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, a notice describing the general characteristics of the collection system and estimated costs; designating the time and place where the commissioners will hear and pass upon protests made against the operation of the proposed district; and stating that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office. The notice shall be published in the newspaper published nearest to the place where the proposed district is to be created for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper; posted in three (3) public places within the boundaries of the proposed district; and a copy mailed by first class mail to every person, firm, or corporation having real property within the proposed district listed upon the last completed assessment list for county taxes the same day the notice is first published."

Section 2. Section 69-6005, R.C.M. 1947, is amended to read as follows:

"69-6005. **Written protest—hearing—effect.** At any time within thirty (30) days after the date of the first publication of the *notice provided in section 69-6004*, any owner of property liable to be assessed for said service may make written protest against the proposed service. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him. At the next regular meeting of the commissioners, after the expiration of the time within [which] such said protest may be so made, the commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, if the protest against the pro-

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posed service is made by the owners of more than fifty per cent of the family residential units; each commercial and industrial service that is to be included in the collection system may be considered as a family residential unit for the purpose of determining per cent of protest; in the proposed district, no further proceedings shall be taken by the commissioners.

In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts, shall be considered the same as any other property in the district. The commissioners may adjourn said hearings from time to time."

Section 3. Section 69-6006, R.C.M. 1947, is amended to read as follows:

"69-6006. **Jurisdiction to order improvements—passage of resolution—brief description and reference.** When no protests have been delivered to the county clerk within thirty (30) days after the date of the first publication of the notice *provided in section 69-6004*, or when a protest shall have been found by said commissioners to be insufficient, or shall have been overruled, immediately thereupon, the commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the commissioners shall pass a resolution creating the said refuse disposal district in accordance with the resolution of intention theretofore introduced and passed by the commissioners.

In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvement, it shall be sufficient to briefly describe the work of the refuse disposal district and to refer to the resolution of intention for further particulars."

Approved March 15, 1973.

CHAPTER NO. 294

An Act to Amend Sections 89-3503 through 89-3506 and 89-3508, R.C.M. 1947, Providing for a Change in the Definition of a Fifty (50) Year Flood Frequency to a Flood of One Hundred (100) Year Frequency.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-3503, R.C.M. 1947, is amended to read as follows:

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"89-3503. **Definitions.** As used in this act, unless the context otherwise requires:

(1) *"A flood of one hundred (100) year frequency" means a flood magnitude expected to recur on the average of once every one hundred (100) years, or a flood magnitude which has a one percent (1%) chance of occurring in any given year;*

(2) "Artificial obstruction" shall mean any obstruction which is not a natural obstruction;

(3) "Channel" shall mean the geographical area within either the natural or artificial banks of a watercourse or drainway;

(4) "Board" shall mean the Montana water resources board;

(5) "Department" means the department of natural resources and conservation provided for in title 82A, chapter 15;

(6) "Designated floodway" shall mean a floodway whose limits have been designated and established by order of the board.

(7) "Drainway" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year, having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse;

(8) "Flood" shall mean the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway;

(9) "Floodway" shall mean the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the flood water of any watercourse or drainway;

(10) "Floodway-encroachment lines" shall mean the lines limiting a designated floodway;

(11) "Floodplain" shall mean the area adjoining the watercourse or drainway which has been or may hereafter be covered by flood water;

(12) "Establish" shall mean construct, place, insert, or excavate;

(13) "Natural obstruction" shall mean any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway by a nonhuman cause;

(14) "Obstruction" shall mean any dam, wall, riprap, embank-

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ment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodway which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property;

(15) "Owner" shall mean any person who has dominion over, control of, or title to an obstruction;

(16) "Political subdivision" shall mean any incorporated city or town or any county organized and having authority to adopt and enforce land-use regulations; and

(17) "Watercourse" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water at least nine (9) months of the year, having a bed and well-defined banks; provided, that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse."

Section 2. Section 89-3504, R.C.M. 1947, is amended to read as follows:

"89-3504. **Program for delineation of floodways—floodway-encroachment lines—land-use regulations.** (1) The board shall initiate a comprehensive program for the delineation of designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data, and have authority to enter into arrangements with the United States geological survey, the United States army corps of engineers or any other state or federal agency for such acquisition.

(2) When sufficient data have been acquired to reasonably locate the floodway of a flood of *one hundred (100) year* frequency, the board shall establish, by order, after a public hearing, floodway-encroachment lines for such a floodway within which a political subdivision may establish land-use regulation. The board shall furnish such data to officials of the political subdivision having jurisdiction over such areas together with a map outlining the areas involved, a copy of this act, adopted rules and regulations of the board, and suggested minimum standards. These standards, rules and regulations shall reflect gradations in flood hazard based on flood frequency and other criteria as outlined in subsection (2) of section 7 [89-3507 (2)] of this act. The location of the encroachment lines shall be the estimated outer boundary of the floodway of *one hundred (100) year* frequency flood, as determined from the

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available data. The board shall record all floodway-encroachment lines established by it in the office of the county clerk and recorder of each county in which such lines are found. The board shall have the power to alter such lines at any later time, by order, after a public hearing if a re-evaluation of the then available flood data warrants it. Notice of any such hearing or order of the board establishing or altering any such line shall be given by publishing such notice once each week for three consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten (10) days prior to the date set for the hearing or the effective date of such order.

(3) If within one (1) year from the date of transmittal of the floodplain information to officials of the political subdivisions, any political subdivision has failed to adopt land-use regulations which meet or exceed the minimum standards of the board, the designated floodway shall be enforced and no artificial obstruction or nonconforming use shall be established by any person within the floodway-encroachment lines for such a *one hundred (100) year* flood as established by the board under subsection (2) of this section, unless specifically authorized by the board."

Section 3. Section 89-3505, R.C.M. 1947, is amended to read as follows:

"89-3505. **Artificial obstructions and nonconforming uses as nuisances.** Any artificial obstruction or nonconforming use in any designated floodway enforced under *section 89-3504, subsections (3) or (4)* and not exempt under section 6 (89-3506) of this act is hereby declared to be a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the board."

Section 4. Section 89-3506, R.C.M. 1947, is amended to read as follows:

"89-3506. **Establishment of artificial obstructions or nonconforming uses unlawful—permitted open space uses—prohibited nonconforming uses.** (1) It shall be unlawful for a person to establish any artificial obstruction or nonconforming use within a designated floodway, or (2) for any owner to permit any artificial obstruction to remain within a designated floodway without a permit from the board. This act shall not affect any existing artificial obstruction or nonconforming use established in the floodway prior to the effective date of this act and before the board has enforced a designated floodway under *section 89-3504, subsections (3) or (4);* provided, that no person shall make nor shall any owner allow alterations of any artificial obstruction within a designated floodway

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whether the obstruction proposed for alteration was located in the floodway before or after the effective date of this act except upon express written approval of the board. Maintenance of an obstruction shall not be construed to be an alteration.

(2) The following open space uses shall be permitted within the designated floodway, to the extent that they are not prohibited by any other ordinance or statute, and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment; (a) agricultural uses (b) industrial-commercial uses such as loading areas, parking areas, emergency landing strips (c) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails (d) forestry, including processing of forest products with portable equipment (e) residential uses such as lawns, gardens, parking areas and play areas (f) excavations subject to the issuance of a permit under section 7 [89-3507].

(3) The following nonconforming uses shall be prohibited within the designated floodway: (a) Any building for living purposes or place of assembly or permanent use by human beings (b) any structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway (c) the construction or permanent storage of any object subject to flotation or movement during flood level periods."

Section 5. Section 89-3508, R.C.M. 1947, is amended to read as follows:

"89-3508. **Powers and duties of board relative to obstructions.** The powers and duties of the board relative to obstructions in a board floodway shall include the following:

(1) Where an obstruction to a floodway established under *section 89-3504, subsections (2) or (4)* has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the board may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the board; and

(2) Where, after investigation, notice, and hearing, an order has been issued to the owner of an obstruction not exempt under the provisions of section 6 [89-3506] of this act for its removal or repair, and the order is not complied with within such reasonable

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time as may be prescribed, or if the owner cannot be found or determined, the board may make or cause such removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law."

Approved: March 15, 1973

CHAPTER NO. 295

An Act Authorizing the Department of Revenue to Investigate Matters Relating to Public Welfare Payments; to Institute Civil and Criminal Actions for Enforcement of the Welfare Laws and to Require the Cooperation of Other Agencies to Effectuate the Purposes of this Act.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. When requested by the department of social and rehabilitation services, the department of revenue shall have the power and duty to:

(a) investigate matters relating to public welfare assistance and vendor payments including but not limited to the claim for an acceptance of welfare benefits by welfare recipients, and the receipt and disbursal of welfare funds by state, county or other governmental agencies;

(b) institute civil or criminal actions in the appropriate courts to enforce the welfare laws and violations thereof.

Section 2. All state departments and agencies and county or other governmental agencies shall cooperate with the department of revenue and its employees to effectuate the purpose of this act.

Section 3. (1) The department of social and rehabilitation services and its local units shall make available to the department of revenue information contained in the welfare files pertinent to the investigations and judicial actions described in section 1.

(2) Every other state, county, or other governmental agency shall make available to the agents or attorneys of the department of revenue, all records, files, memoranda, forms or other papers relating to public welfare matters including income tax returns filed with the department of revenue.

Section 4. (1) No information obtained by the department of revenue or its agents and attorneys as a result of an investi-

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gation shall be disclosed except in accordance with the laws applicable to the source of information; provided, however, such information may be used or disclosed as necessary in any court action.

(2) Each employee violating the disclosure provisions shall be subject to the criminal charge and penalties applicable to the source of information.

Section 5. As used in this act, "public welfare" and "welfare" mean any kind of financial or social assistance administered by or under the supervision of the department of social and rehabilitation services.

Approved: March 15, 1973.

CHAPTER NO. 296

An Act to Amend Section 4-414, R.C.M. 1947, "Hours for Sale of Liquor," by Deleting any Reference to Biennial General or Primary Election.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 4-414, R.C.M. 1947, is amended to read as follows:

"4-414. **Hours for sale of liquor.** No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail during the following hours:

(a) Sunday, from two A. M. to one P.M.;

(b) On any other day between two A.M. and eight A.M.; provided, however, when any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town."

Approved: March 15, 1973

CHAPTER NO. 297

An Act To Provide For The Office of Lieutenant Governor Implementing Article VI, Section 1(3) of The 1972 Montana Constitution; Amending Sections 25-501 and 82-1703, R.C.M. 1947;

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And Repealing Sections 82-1701, 82-1702 And 94-5418, R.C.M. 1947, Which Deal With the Lieutenant Governor As President Of The Senate.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is created an office of lieutenant governor.

Section 2. The lieutenant governor may:

(1) prescribe rules for the administration of the office;

(2) hire personnel for the office and establish policy to be followed by such personnel; and

(3) compile and submit a budget for the office.

Section 3. The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor.

Section 4. Section 25-501, R.C.M. 1947, is amended to read as follows:

"25-501. **Salaries of certain elected state officials.** The annual salaries paid to certain elected officials of the state of Montana shall be as follows:

Governor	$25,000
Lieutenant governor	*$18,500*
Chief justice of the supreme court	$24,000
Justices of the supreme court, each	$22,500
Attorney general	$19,000
State auditor	$15,000
Superintendent of public instruction	$17,500
Railroad commissioner	$14,000
State treasurer	$15,000
Secretary of state	$15,000
Clerk of the supreme court	$11,500"

Section 5. Section 82-1703, R.C.M. 1947, is amended to read as follows:

"82-1703. **Compensation — when acting as governor.** When the lieutenant governor acts as governor, he is entitled to receive during the time he so acts, the compensation which the governor, if acting, would be entitled to receive for such time."

Section 6. Sections 82-1701, 82-1702 and 94-5418, R.C.M. 1947, are repealed.

Approved: March 15, 1973

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CHAPTER NO. 298

An Act To Amend Sections 79-301, 79-306, And 79-601, R.C.M. 1947, For The Codification And General Revision of The Laws Relating To The Deposit of State Funds And The Unified Investment Program For Public Funds As Required By Article VIII, Section 13 of The 1972 Montana Constitution; And To Repeal Sections 79-1201 Through 79-1211, 79-1213, 79-1214, And 79-1216, And Sections 81-1001 Through 81-1008, R.C.M. 1947; And Amending Section 79-1215, R.C.M. 1947.

It is the intent of the legislative assembly that all nonamendatory sections of this bill be codified in title 79, chapter 3, Revised Codes of Montana, 1947, with the subject matter under each heading assigned to a separate section in that chapter.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 79-301, R.C.M. 1947, is amended to read as follows:

"79-301. **Deposit of funds in the hands of the state treasurer.** (1) *Under the direction of the board of investments,* the state treasurer *shall* deposit public moneys in his possession and under his control in solvent banks located in the state, except as otherwise provided by law, subject to national supervision or state examination. The board *of investments* may require the payment of quarter annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks and *the* board of *investments,* which rate shall be fixed semiannually during the months of July and January of each year.

(2) No *such* deposits in excess of the amount insured *by the federal deposit insurance corporation* shall be made unless *the* bank first *delivers* to the state treasurer or *deposits in trust* with some solvent bank as hereinafter provided, as security therefor, *bonds or other obligations of the kinds listed in section 4 of this act, having a market value* at least *equal to* the amount of such deposits in excess of the amount *so* insured. *The* board *of investments* may require security *of* a greater *value. When* negotiable securities are placed in trust, the trustees' receipt may be accepted *instead* of the actual securities *if the* receipt is in favor of the state treasurer, his successors in office, and the state of Montana, and the form of receipt and the *trustee* have been approved by the *board of investments.*

(3) When moneys have been deposited, under the direction of *the* board *of investments* and in accordance with the law, the treasurer *is* not liable for loss on account of any such deposit occurring *from* any cause other than his own neglect *or* fraud. *The* state trea-

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surer *shall* deposit funds in such banks, and in such amounts as may be designated by the board *of investments,* and withdraw such deposits when instructed to by the board *of investments. The* state treasurer shall withdraw all deposits, or any part thereof, from time to time, to pay and discharge the legal obligations of the state, duly presented to him in accordance with the law.

(4) Any bank pledging securities as provided in this *section* may at any time substitute securities for any part of the securities pledged. The collateral so substituted shall *conform to section 4 of this act and have a market value* at least *sufficient for compliance with subsection (2) above. If* the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made forward by registered or certified mail to the state treasurer and to the depository bank, a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository bank."

Section 2. Section 79-306, R.C.M. 1947, is amended to read as follows:

"79-306. **State treasurer as treasurer of state agencies—deposits of moneys.** (1) The state treasurer is designated the treasurer of every state *agency* and institution.

(2) All state *agencies* and institutions shall deposit daily all moneys, credits, evidences of indebtedness, and securities *either* in banks located in the city or town in which *the agencies* and institutions are situated *if* there is a qualified bank in *the* city or town *as* designated by the state treasurer with the approval of the *board of investments,* or with the state treasurer. Such banks shall pledge securities sufficient to cover *the* deposits at all times, and *the* deposits shall be made in the name of the state treasurer, and shall be subject to withdrawal at his option, and shall draw interest as other state moneys, *in accordance with the provisions of sections 79-301 and 79-302.*

(3) Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investment of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by such agency, and all such funds shall be deposited and invested in accordance with such covenants notwithstanding any provision of this chapter."

Section 3. Section 79-601, R.C.M. 1947, is amended to read as follows:

"79-601. **Support of state institutions.** For the support and en-

dowment of each state *institution* there is annually and perpetually appropriated *the* income from all permanent endowments *therefor* and from all land grants as provided by law. All moneys received or collected *in connection with such endowments* by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except *revenues* pledged to secure the payment of principal and interest of *obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system, and for the refunding of such obligations,* or *moneys* which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, shall be paid over to the state treasurer who shall deposit the same to the credit of the proper fund."

Section 4. **Security for deposits of public funds.** The following kinds of securities may be pledged to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration; and

(i) federal housing administration (not including insured mortgages);

(4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(5) interest bearing warrants of the state or of any county, city, school district, or other political subdivision of the state, issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in

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the current budget for expenditure from the fund in the year in which they are issued;

(6) obligations of housing authorities of the state, secured by a pledge of annual contributions or by a loan agreement, made by the United States or any agency thereof, providing for contributions or a loan sufficient, with other funds pledged, to pay the principal of and interest on the obligations when due; and

(7) general obligation bonds of other states and of municipalities and counties of other states.

Section 5. **Unified investment program for public funds.** (1) The uniform investment program directed by article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall be administered by the board of investments in accordance with the rules provided in this chapter, and with that degree of judgment and care, under circumstances from time to time prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

(2) All state funds shall be invested and reinvested in securities enumerated in section 7 of this act, to the maximum extent consistent with this policy and with the need and timing of cash expenditures for particular purposes.

(3) The board of investments may:

(a) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to sections 79-301 and 79-306;

(b) direct the sale of any securities in the program at their full and true value, when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(4) The state treasurer shall keep an account of the total of each investment fund and of all the investments belonging to such fund, and of the participation of each treasury fund account therein, and shall make from time to time such reports with reference thereto as may be directed by the board of investments.

(5) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the trust and legacy fund shall be paid from income otherwise receivable from the pooled investment fund; and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds.

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Section 6. **Investment funds.** For each treasury fund account into which state funds are segregated by the department of administration pursuant to section 79-413, individual transactions and totals of all investments shall be separately recorded to the extent directed by the department. However, the securities purchased and cash on hand for all treasury fund accounts not otherwise specifically designated by law or by the provisions of a gift, donation, grant, legacy, bequest or devise from which the fund account originates to be invested shall be pooled in an account to be designated "Treasury Cash Account" and placed in one of the investment funds designated below. The share of the income for this account shall be credited to the general fund. If within the list hereinafter of separate investment funds, more than one investment fund is included which may be held jointly with others under the same separate listing, all investments purchased for that separate investment fund shall be held jointly for all the accounts participating therein, which shall share all capital gains and losses and income pro rata. Separate investment funds shall be maintained as follows:

(1) the trust and legacy fund, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in sections 2 and 10, article x, of the 1972 Montana constitution, and all money referred to in section 79-410(8);

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system now or hereafter maintained by the state, including those now maintained under the following statutes:

(a) the highway patrolmen's retirement system described in title 31, chapter 2;

(b) the public employees' retirement system described in title 68;

(c) the game wardens' retirement system described in title 68, chapter 14;

(d) the teachers' retirement system described in title 75, chapter 62; and

(e) the industrial accident insurance program described in title 92, chapter 11;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by section 79-410;

(4) a fund consisting of gifts, donations, grants, legacies, bequests, devises and other contributions made or given for a specific

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purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise or contribution on the part of the state of Montana to be observed. If such gift, donation, grant, legacy, bequest, devise, or contribution permits investment, and is not otherwise restricted by its terms, it may be treated jointly with other such gifts, donations, grants, legacies, bequests, devises, or contributions; and

(5) such additional investment funds as may be expressly required by law, or may be determined by the board of investments to be necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source.

Section 7. **Permissible investments.** (1) The following securities are permissible investments for all investment funds referred to in section 6, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under section 4 of this act;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States, or in Canada if the obligations purchased are payable in United States dollars; provided that all investments under subsection (b) must be rated by one (1) nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of prime quality, as defined by one (1) nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in two hundred seventy (270) days or less; and

(ii) the issuing corporation, or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had a ratio of current assets to current liabilities, including among current liabilities long term debt maturing within one (1) year, of at least one and one-half (1½) to one (1); and had received net income averaging one million dollars ($1,000,000) or more annually for the preceding five (5) years; and

(iii) no investment may be made at any time under subsection (c) which would cause the book value of such investments in any investment fund to exceed ten percent (10%) of the book value of such fund, or would cause the commercial paper of any one corporation to exceed two percent (2%) of the book value of such fund;

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(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of five hundred million dollars ($500,000,000);

(e) interest bearing deposits in banks located in the state of Montana, provided, however, that the board of investments shall require pledged securities as specified in section 79-301; interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds;

(f) unencumbered real property and first mortgages on unencumbered real property, provided that:

(i) no such mortgage shall be purchased unless:

(A) the principal amount of the loan secured by the mortgage is seventy-five percent (75%) or less of the appraised value of the property; or

(B) thirty percent (30%) or more of the loan secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(C) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (f) which would cause the book value of such investments in any investment fund to exceed fifty percent (50%) of the book value of such fund.

(2) Investments from the pooled investment fund, shall be restricted to fixed income securities described in subsections (a) to (e) above.

(3) Retirement funds, only, may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States, provided that:

(a) the corporation has assets of a value not less than ten million dollars ($10,000,000); and

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of five (5) consecutive years immediately before the date of investment, have been at least one and one-half (1½) times the aggregate of interest and preferred dividends required to be paid during this period; and

(c) if the investment is common stock,

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(i) the stock has paid cash dividends in each of at least five (5) years immediately before it is purchased; and

(ii) the aggregate earnings of the corporation during this period which were available for payment of dividends on common stock were at least equal to the aggregate of the cash dividends paid thereon; and

(iii) not more than two percent (2%) of the assets of any retirement fund may be invested in common stocks or in fixed income securities convertible into common stock not conforming to the dividend and earnings standards stated in paragraphs (i) and (ii) above, so long as the corporation maintains the asset value required in subsection (a) and evidences appropriate growth potential and probable earnings gain; and

(d) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed twenty percent (20%) of the book value of such fund, or would cause the stock of one corporatin to exceed one percent (1%) of the book value of such retirement fund.

Section 8. **Investment of local government funds.** (1) The governing body of any city, county, school district, or other local government unit or political subdivision having funds which are available for investment, and are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner, may direct its treasurer to remit such funds to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

(2) A separate account, designated by name and number for each such participant in the fund, shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report shall be furnished to each participant having a beneficial interest in the pooled investment fund, showing the changes in investments made during the preceding month. Details of any investment transaction shall be furnished to any participant upon request.

(3) The principal and accrued income, and any part thereof, of each and every account maintained for a participant in the pooled investment fund shall be subject to payment at any time from the fund upon request. Accumulated income shall be remitted to each participant at least annually.

(4) No order or warrant shall be issued upon any account for a larger amount than the principal and accrued income of the account to which it applies, and if any such order or warrant is

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issued, the participant receiving it shall reimburse the excess amount to the fund from any funds not otherwise appropriated, and the state treasurer shall be liable under his official bond for any amount not so reimbursed.

Section 9. Sections 79-1201 through 79-1211, 79-1213, 79-1214, and 79-1216 and sections 81-1001 through 81-1008, R.C.M 1947, are repealed.

Section 10. Section 79-1215, R.C.M. 1947, is amended to read as follows:

"79-1215. **Records of treasurer—publicity to contributors given by legislature.** The state treasurer shall keep in a book provided for that purpose, a permanent record of all gifts, donations, grants, legacies, bequests, devises and other contributions administered by the state board *of investments* under acts and parts of acts *providing therefor or accepting the same on the part of the state of Montana.* This record shall show the names of the givers, the purposes of the contributions and all essential facts relating thereto. A duplicate of this record shall be kept by the secretary of state. These records shall be preserved perpetually as a lasting memorial to the givers and their interest in society. The *legislature* shall from time to time make provisions for suitable publicity concerning these benefactors of their fellow men."

Approved: March 15, 1973.

CHAPTER NO. 299

An Act To Render Unenforceable All Liens Held By The State Department of Social And Rehabilitation Services Permitted Under Sections 71-241 Through 71-250, R.C.M. 1947; And To Repeal Sections 71-241, 71-243, 71-244, 71-245, 71-246, 71-248 And 71-249, R.C.M. 1947, Relating To The Lien of The State Department of Social And Rehabilitation Services Upon All Real Property of An Applicant For Public Assistance And The Enforcement of The Lien And Amending Section 71-247, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. All liens held by the department of social and rehabilitation services under authority granted by sections 71-241 through 71-250, R.C.M. 1947, are unenforceable and shall be released.

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Section 2. Section 71-247, R.C.M. 1947, is amended to read as follows:

"71-247. **Recovery from the estate of a decedent — claim for assistance paid.** Upon the death of any recipient of public assistance other than aid to dependent children, or general relief, the state department of public welfare shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this act, separately stating therein the amount of all assistance paid from and after the 1st day of July, 1953.

The state board of public welfare shall not assert its claim during the lifetime and continued occupancy of any real estate *of a deceased recipient's estate* by the surviving spouse or dependent *as a home or residence* unless other claimants or persons shall have instituted proceedings for the probate of the estate of the deceased recipient, in which case the board shall file its claim hereunder."

Section 3. Sections 71-241, 71-243, 71-244, 71-245, 71-246, 71-248, 71-249, R.C.M. 1947, are repealed.

Approved: March 15, 1973

CHAPTER NO. 300

An Act to Amend Section 33-124, R.C.M. 1947, Relating to the Value of Land Selected and Claimed for Homesteads.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 33-124, R.C.M. 1947, is amended to read as follows:

"33-124. **Homesteads—quantity and value of land.** Homesteads may be selected and claimed:

1. Consisting of any quantity of land not exceeding three hundred and twenty (320) acres used for agricultural purposes, and the dwelling house thereon and its appurtenances, and not included in any town plot, city or village; or

2. A quantity of land not exceeding in amount one-fourth (¼) of an acre, being within a town plot, city or village, and the dwelling house thereon and its appurtenances.

3. Such homestead, in either case, shall not exceed in value the sum of *twenty thousand dollars ($20,000)*, provided, however,

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that in any proceedings instituted to determine the value of such homestead, the assessed value of such land, with included appurtenances, if any, and of such dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead."

Approved: March 15, 1973.

CHAPTER NO. 301

An Act to Amend Section 66-411, R.C.M. 1947, to Increase the Fees for the Issuance and Renewal of Certificate of Registration to Practice Barbering; Increase the Annual License Fee for Barbershops; and Provide an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-411, R.C.M. 1947, is amended to read as follows:

"66-411. **Fees to be paid by apprentices, students, barbers and barber shops.** (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card shall be twenty-five dollars ($25.00). The fee to be paid by an applicant for an examination to determine his or her fitness to receive a certificate of registration to practice barbering as defined in this act, shall be twenty dollars ($20.00), and for the issuance of said certificate an additional *ten dollars ($10)*.

(2) Each person registered as a barber or barber apprentice, shall on or before the first day of July of each year pay a license fee of *ten dollars ($10)* for the renewal of his or her certificate of registration, and if any barber shall fail to have such certificate renewed on or before the first day of July of each year such barber shall upon the renewal of said certificate of registration pay a penalty, or a restoration fee of ten dollars ($10), in addition to the regular fee of *ten dollars ($10)* provided for herein, and if a certificate of registration is not renewed within one (1) year after date of expiration thereof, such barber shall not be entitled to have such certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for by this section. Provided, further, however, that physically handicapped men and women, trained for the barber profession by the state bureau of civilian rehabilitation and certified by that department as having successfully completed a nine (9) months' course in a reputable barber

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college will not be required to pay any fees, but will for a period of one (1) year immediately following their training be exempted from all except the sanitary provisions of the barber act, or any of its amendments, and provided, further, that no other or additional license, or fee, shall be imposed upon barbers, or barber apprentices, by any municipality or other subdivision of the state of Montana.

(3) In addition to the fees and charges now provided by existing law, all barbershops heretofore established, and which have been under the inspection of the board of *barbers*, shall pay an annual license fee of *ten dollars ($10)*. Barbershops hereafter established shall pay an initial inspection fee of twenty dollars ($20) for the first year or portion thereof, and shall pay an annual license fee of *ten dollars ($10)*.

(4) All barber *shop, school* or college licenses shall expire on the first day of July of each year, following the issuance of said license, and every owner or manager of a barber shop, school or college which continues in active operation shall annually, on or before July first renew his barber shop, school or college license and pay the required fee. For the first year this act is in effect, all licenses which expire on the thirty-first day May shall be deemed in force until the first day of July.

Every barber shop which shall fail to have such license renewed on or before the first day of July of each year shall upon the renewal thereof pay a penalty, or a restoration fee, of ten dollars, ($10.00), and each barber school or college which shall fail to have such license renewed on or before the first day of July of each year shall upon the renewal thereof pay penalty, or restoration fee, of fifty-five dollars ($55.00)."

Section 2. This act is effective on its passage and approval.

Approved: March 15, 1973.

CHAPTER NO. 302

An Act to Amend Section 66-408, R.C.M. 1947, to Increase the Rate of Compensation of Members of the Board of Barbers from Twenty-five Dollars ($25) to Thirty Dollars ($30) Per Day While Engaged in Duties of Inspecting Barber Shops.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-408, R.C.M. 1947, is amended to read as follows:

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"66-408. **Compensation, funds and reports.** Each member of the board shall receive a compensation of *thirty dollars ($30)* per day while *engaged in the duties of inspecting barber shops and twenty-five dollars ($25) per day while* attending board meetings together with legitimate and necessary expenses incurred in attending the meeting of said board *or while engaged in the duties of inspecting barber shops.*

The board of *barbers* shall be self-sustaining financially and no funds of the state shall be paid for the operation and maintenance of said board. The disbursements of said board shall be paid upon the warrant of the president and secretary.

The board shall make reports as provided in section 82-4002."

Approved: March 15, 1973.

CHAPTER NO. 303

An Act to Amend Sections 40-4413 and 40-4414, R.C.M. 1947, to Include Nursing Home Administrators and Long-term Care Facilities.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 40-4413, R.C.M. 1947, is amended to read as follows:

"40-4413. **Cancellation or increase of premium rates of professional liability insurance by reason of unfounded claims prohibited.** Whenever an action for damages is filed against, or a claim or demand for damages is made to an insurer of, a physician and surgeon, dentist, registered nurse, *nursing home administrator,* licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, pharmacist, optometrist or veterinarian, duly licensed as such under the laws of this state, or against a licensed hospital *or long-term care facility* as the employer of any such person, in an action, claim or demand for error, omission, professional negligence, or performance of services without consent, and such action, claim or demand is later determined to be unfounded and no payment is made by the insurer to the claimant on behalf of such licensee or licensed hospital *or long-term care* facility or is finally determined to establish nonliability to plaintiff by such licensee or licensed hospital *or long-term care facility*, the fact of such litigation, claim or demand shall not be a ground for cancellation nor for any increase in insurance premium rates of the professional liability insurance during the term of the policy."

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Section 2. Section 40-4414, R.C.M. 1947, is amended to read as follows:

"40-4414. **Cancellation or increase of premium rates of professional liability insurance—60 days' written notice required.** Any insurer who insures a physician and surgeon, dentist, registered nurse, *nursing home administrator,* registered physical therapist, podiatrist, licensed psychologist, osteopath, chiropractor, pharmacist, optemetrist, or veterinarian, duly license as such under the laws of this state, or a licensed hospital *or long-term care facility* as the employer of any such person against liability for error, omission, professional negligence, or performance of services without consent, shall not cancel the policy so insuring such person or increase the premium rates thereon without first providing the insured sixty (60) days written notice of the insurer's intention to cancel the policy or increase the premium rates."

Approved: March 15, 1973.

CHAPTER NO. 304

An Act to Provide that a Plaintiff in an Open Pit Mining Eminent Domain Action Must Agree to Purchase all Property Within Three Hundred (300) Yards of the Condemned Tract; Providing Further that the Cost of Replacement Shall Be Considered in Determining Value of Buildings Owned by the City, County, or State; Amending Sections 50-813, 50-815 and 50-816, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 50-813, R.C.M. 1947, is amended to read as follows:

"50-813. **Eminent domain for open pit mining—agreement to purchase property required.** Whenever the right of eminent domain is exercised to acquire estates and rights inland for the purpose of open pit mining of the ores, metals or minerals owned by the plaintiff, the decree shall be granted on condition that the plaintiff protects the public in the immediate area by agreeing to purchase all property within three hundred (300) *yards* of the surface tract condemned, including vacant lots, provided the owner or owners thereof serve upon the plaintiff and file with the court a written offer stating the amount asked for such property within thirty (30) days from the entry of the court order appointing commissioners in said eminent domain proceeding. In the event the plaintiff and the owner or owners are unable to agree upon the

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compensation to be paid for such property, the court, upon petition of either party, may proceed to determine the compensation to be paid for such property in the manner prescribed in title 93, chapter 99, Revised Codes of Montana, 1947, as amended, for ascertaining the value of property taken through the exercise of the right of eminent domain."

Section 2. Section 50-815, R.C.M. 1947, is amended to read as follows:

"50-815. **Measure of compensation for property.** *(1)* The measure of compensation for the property located within three hundred (300) *yards* of the surfaced tract condemned shall be the fair market value or the value of similar property in a similar area not affected by open pit mining operations, whichever the owner of the surface property shall elect to receive.

(2) The measure of compensation for a building owned by the city, county, or state shall be the value of the cost of replacing the building in a similar area not affected by open pit mining operations."

Section 3. Section 50-816, R.C.M. 1947, is amended to read as follows:

"50-816. **Notice to owners of condemnation for open pit mining—filing of plat.** Any party seeking to condemn property for open pit mining purposes shall serve notice in writing on all owners of property within three hundred (300) *yards* of the surface tract sought to be condemned or in lieu thereof shall file a plat showing the boundaries of the property sought to be condemned in the office of the county clerk and recorder, and the filing of said plat shall constitute notice to the owner or owners not personally served with written notice as herein provided."

Approved: March 15, 1973.

CHAPTER NO. 305

An Act Amending Section 26-301, R.C.M. 1947, to Forbid Hunters to Drive Their Vehicles off established Roads or Trails, Except to Remove a Slain Animal.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 26-301, R.C.M. 1947, is amended to read as follows:

"26-301. **Restrictions of manner of taking and possessing**

fish and game and powers of commission relating thereto. (1) It shall be unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot or kill, any game animal, or game bird from any self propelled or drawn vehicle, or on, or from any public highway in the state of Montana, or by the aid or with the use of any set gun, jack-light, or other artificial light, trap, snare, salt lick, nor shall any such set gun, jack-light or other artificial light, trap, snare, salt lick or other device to entrap or entice game animals or game birds be used, made or set, nor may rifles be used to hunt or shoot upland game birds unless the use of rifles is permitted by the commission; provided, however, that this does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number ten (10) gauge fired from the shoulder, nor shall any game fish be caught, captured, or taken, or attempted to be caught, captured or taken by the aid or with the use of any gun, or trap, nor shall any such set gun, or trap or other device to entrap game fish be used, made, or set.

(2) (a) No game birds or game or fur-bearing animals shall be killed, taken or shoot at from any aircraft, nor shall any aircraft be used for the purpose of concentrating, pursuing, driving, rallying or stirring up any game or migratory birds, game or fur-bearing animals, nor shall any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving or stirring up any game birds, or migratory waterfowl, or game or fur-bearing animals.

(b) No person in an aircraft in the air shall spot or locate any game, or migratory bird, game or fur-bearing animals and communicate the location or approximate location thereof by any signals whatsoever, whether radio, visual or otherwise, to any person or persons then on the ground.

(3) No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence, or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

(4) No person may use a shotgun to hunt, kill or shoot deer except with loads as specified by the commission.

(5) No person shall chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; provided, however, that livestock owners, employees of the state fish and game commission and of the federal fish and wild-

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life service may use dogs in pursuit of stock-killing bears, and stock-killing mountain lions, or other means of taking stock-killing bears and stock-killing mountain lions except the use of the dead fall; providing, however, that traps used in capturing bear shall be inspected twice each day, which inspection shall be twelve (12) hours apart; and provided further, that a person may take game birds during the open season thereon with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game director.

(6) The state fish and game commission shall have the power to designate certain waters where set lines may be used to fish for certain species of game or nongame fish, and the commission may designate the number of hooks and lines and the length of line or lines which may be used as set lines.

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the commission shall declare an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging, the taking of paddlefish with long bow and arrow when the commission shall declare an open season when paddlefish may be taken by long bow and arrow, the taking of walleyed pike, sauger, northern pike and nongame fish with spear or gig when the commission shall declare an open season for taking walleyed pike, sauger, northern pike and nongame fish with spear or gig, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and four (4) feet in width, in such waters as may be designated by the commission.

(8) No person, while hunting game animals or game birds shall use a motor-driven vehicle on any other than an established road or trail, unless he has reduced a big game animal to possession and cannot easily retrieve said big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, provided that after such retrieval, such motor-driven vehicle is again returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting game animals or game birds, shall drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or

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attempt to harass any game animal or game bird with the use or aid of any motor-driven vehicle. No person, while hunting game animals or game birds shall drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail unless written permission has been given by the land owner and in possession of the hunter.

(9) Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law."

Approved: March 15, 1973.

CHAPTER NO. 306

An Act Directing County Commissioners to Fix Salaries of Certain County Officers Annually According to Statutory Schedules; Repealing Section 25-609, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The county commissioners shall, by resolution on or before *July 1* of each year, fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, county attorney, clerk of the district court for the following fiscal year in conformity with the appropriate statutory salary schedule pertaining to each office. The salary schedule used for each office shall be the statutory schedule in effect on the first day of the following fiscal year.

Section 2. Section 25-609, R.C.M. 1947, is repealed.

Approved: March 15, 1973.

CHAPTER NO. 307

An Act to Amend Section 75-7906, R.C.M. 1947, to Delete the Stated Amount of Administration Funds for the Traffic Education Program.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7906, R.C.M. 1947, is amended to read as follows:

"75-7906. **Annual allocation and distribution of traffic education account proceeds, and allocation for state administration.** The superintendent of public instruction shall annually order the distribution of all moneys in the traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education moneys shall be based on the distribution policy promulgated by the superintendent of public instruction; provided that the reimbursements to districts shall be based upon the number of pupils, who in a given school fiscal year, complete an approved traffic education course including both the classroom instruction and behind-the-wheel driving.

Before such fund is disbursed, there shall be deducted an amount necessary to provide for the state administration of the traffic education program by the superintendent of public instruction. Such state administration may include development, printing, and distribution of essential materials; preparation of teachers of traffic education; state supervision of the program; and any and all other activities deemed necessary by the superintendent of public instruction."

Approved: March 15, 1973.

CHAPTER NO. 308

An Act to Amend Sections 45-801 and 45-802, R.C.M. 1947; to Delete Maximum Amount of Threshermen's Liens Upon Grain or Crops and to Provide for Arbitration of Disputes Over Rates Charged for Liens.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 45-801, R.C.M. 1947, is amended to read as follows:

"45-801. **Liens of threshermen and owners of combine harvester** and thresher upon grain or crops. All threshermen *or swathers* owning or operating threshing *or swathing* machines, and all owners of combine harvesters and threshers, shall have a lien upon the grain and other crops *swathed or* threshed by said threshing *or swathing* machine or cut and threshed by said combine harvester and thresher, for and on account of the services rendered and the labor performed by them on said grain and crops, and which

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lien may be claimed by the owner of said grain for the reasonable value of such services, if same are performed by him. *Liens on grain and other crops* shall be charged for at the prevailing price for that particular locality in which such grain or *other crops* is threshed, *harvested* or combined; and, provided, notices are given and lien is filed within the time provided by this act.

If the prevailing price for threshing, harvesting or combining grain or other crop is disputed by the thresherman or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of chapter 201, title 93.''

Section 2. Section 45-802, R.C.M. 1947, is amended to read as follows:

"45-802. **Claim of lien, when, where and how filed, service of notice.** Every person intending to avail himself of the benefits of this act must file with the county clerk of the county in which said grain or other crops were grown, within ten days after the last service was rendered or labor performed in the threshing of said grain or other crops, or the cutting and harvesting and threshing by said combined harvester and thresher, a notice that within twenty days a lien, *as specified in section 45-801*, will be claimed, and within twenty days thereafter shall file with the county clerk and recorder of the county in which said grain or other crops were grown, a just and true account of the amount due him or them for such services or labor after allowing all just credits and offsets and containing a correct description of the grain or other crops to be charged with such lien, the price agreed upon for such threshing or cutting and harvesting, the name of the person, firm or corporation for whom such labor and services were performed, and a description of the lands as nearly as possible, upon which said grain or other crops were raised, and a description of the legal subdivision of land upon which said grain is stored, and if said grain is stored in an elevator, the locality of the said elevator, which statements of facts shall be verified by affidavit of the person claiming such lien, or his duly authorized agent or attorney, having knowledge of the facts; but any error or mistake in the account or description of the grain or other crops or of the property upon which it was raised, shall not invalidate such said lien.

If the grain or other crops so threshed, cut, harvested and threshed are being hauled from the machine or combine direct to the elevator or to any other purchaser, then the threshermen or owner of the combine desiring to claim such lien shall also serve written notices upon the elevatorman or other private purchaser, that he will claim and file a lien upon said grain or other crops.

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for his services or labor performed in threshing, or combining and threshing the same."

Approved: March 15, 1973.

CHAPTER NO. 309

An Act Permitting the Board of County Commissioners to Hire Administrative Assistants and Set Their Duties and Salary; and Amending Section 16-2409, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Employment by the board of county commissioners of administrative assistants. The board of county commissioners may employ such persons as it deems necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary and responsibilities of such persons.

Section 2. Section 16-2409, R.C.M. 1947, is amended to read as follows:

"16-2409. **County and township officers may generally appoint deputies at discretion.** Every county and township officer, except justice of the peace, may appoint as many deputies *or assistants* as may be necessary for the faithful and prompt discharge of the duties of his office. *All compensation or salary of any deputy or assistant shall be as provided in this code.*"

Approved: March 15, 1973.

CHAPTER NO. 310

An Act Amending Section 66-803, R.C.M. 1947, to Extend the Length of Study for the Two Thousand (2,000) Hour Cosmetology Course From Not More Than Twelve (12) Months to not More Than Fourteen (14) Months; and Changing the Fee Charged For Temporary License.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-803, R.C.M. 1947, is amended to read as follows:

"66-803. **Requirements for practicing or teaching cosmetology or operating a school of cosmetology.** Before anyone may practice or teach cosmetology, or any person, firm, or copartnership, or

corporation may operate a school of cosmetology, such person, firm, or copartnership or corporation must obtain a license *or* certificate of registration from the state board as hereinafter provided. To be eligible to take the examination to practice cosmetology the applicant must not be less than eighteen (18) years of age and a graduate of the eighth grade school and must be of good moral character. Such applicant must have completed a continuous course of study of at least two thousand (2,000) hours in a registered beauty school, which course of study has been distributed over a period of not less than ten (10) months or more than *fourteen (14)* months, and has received a diploma from said beauty school, or must have completed the course of study in cosmetology prescribed by the state board of education, ex officio regents of the university of Montana, for northern Montana college. Such person so qualified must file with the secretary of the state board, a written application to take such examination accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the state board, and shall deposit with the secretary of the said board, the required examination fee and pass an examination as to his or her fitness to practice cosmetology.

Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he must:

(1) Be a graduate of high school or possess an equivalent of a high school diploma recognized by the state superintendent of public instruction.

(2) Meet the following requirements:

(a) He must have an operator's license to practice cosmetology issued by the state of Montana, been actively engaged as a beauty operator for one (1) continuous year immediately prior to taking the examination, and have received a diploma from a registered school of cosmetology approved by the board certifying satisfactory completion of five hundred (500) hours of student teacher training; or

(b) He must have been actively engaged as a beauty operator for three (3) continuous years immediately prior to taking the teachers' examination.

The applicant must qualify by filing an application as prescribed by the board and by taking and passing the examination prescribed and given by the board. The license must be renewed annually as provided in section 66-816, R.C.M. 1947.

Anyone failing twice to pass an examination may not apply to retake the examination:

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(1) Sooner than six (6) months after the date of the second failure; or

(2) Until he has taken two hundred (200) hours additional teacher training at a registered school of cosmetology approved by the board.

Provided, further, the board may grant to graduates of registered schools of this state upon the payment of *the fee prescribed by law,* a temporary license authorizing such graduates to practice as an operator under the supervision of a licensed cosmetologist, in the practice of hairdressing and beauty culture, for a period of not to exceed ninety (90) days, or until the next examination is held by the board. No such temporary license shall be issued except upon the presentation by the applicant of a certificate of graduation from a registered school of the state of Montana, and such temporary licenses shall not be renewable.

No person, firm or copartnership, or corporation shall operate a school for the purpose of teaching cosmetology for compensation unless a certificate of registration has been first obtained from the state board. Application for such certificate shall be filed with such board on such form as the board shall prescribe.

No teacher or student teacher shall be permitted to practice cosmetology on the public in a school. Any school that enrolls student teachers for a course of student teacher training shall not have at any one (1) time more than one (1) student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

No school for teaching cosmetology shall be granted a certificate of registration unless it complies, or can comply, with the following requirements:

(1) Have in its employ a licensed teacher who shall be, at all times, in the immediate supervision of the work of said school, or such other teachers as the state board may determine is necessary for the proper conduct of said school. Provided, however, that there shall not be more than twenty-five (25) students to each such teacher.

(2) It shall possess such apparatus and equipment as the state board may determine is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(3) It shall maintain a school term of not less than two thousand (2,000) hours, and shall prescribe a course of practical training and technical instructions equal to the requirements for

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state board examinations, which course of training and technical instruction shall be prescribed by the state board.

(4) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(5) No owner, or person in charge of a school of cosmetology shall permit any person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, any room used, wholly or in part for a school of cosmetology.

(6) *Licenses or certificates* of registration may be refused, revoked, or suspended, as provided in section 66-811.

(7) The state board shall have the power to prescribe such further rules and regulations as they deem necessary for the proper conduct of schools of cosmetology.

(8) The state board shall require of the person, firm, copartnership, or corporation operating a school to furnish a good and sufficient bond in the amount of five thousand dollars ($5,000) and in a form and manner to be prescribed by the board.

(9) No professional beauty shop shall be operated in connection with any school of cosmetology.

(10) The board may, by ruling, establish suitable curriculum for teachers' training in registered schools of cosmetology.

If a licensee shall contract a communicable disease, endangering the public health, the board shall, upon proof of same, cancel or suspend his or her license until such time as said licensee can secure a physician's certificate showing that such licensee is free from a communicable disease."

Approved: March 15, 1973.

CHAPTER NO. 311

An Act Amending Section 93-9902, R.C.M. 1947, to Declare That the Extraction of Coal By Strip Mining or Open Pit Mining Is Not A Public Use; and Setting Forth the Public Policy Therefor.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-9902, R.C.M. 1947, is amended to read as follows:

"93-9902. **What are public uses.** Subject to the provisions of

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this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.

2. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislative assembly of the state.

3. Public buildings and grounds for the use of any county, city, or town, or school districts; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, city, or town, or the inhabitants thereof, which may be authorized by the legislative assembly; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized.

4. Wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water, and drainage and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs, necessary for collecting and storing water.

5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills and smelters for the reduction of ores, also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores, and sites for reservoirs necessary for collecting and storing water.

6. Private roads leading from highways to residences or farms.

7. Telephone or electric light lines.

8. Telegraph lines.

9. Sewerage of any city, county, or town, or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than ten (10) families, or of any public buildings belonging to the state, or to any college or university.

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10. Tramway lines.

11. Electric power lines.

12. Logging railways.

13. Temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways, for such time as the court or judge may determine; provided, the grounds of state institutions be excepted.

14. Underground reservoirs suitable for storage of natural gas.

15. To mine and extract ores, metals or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others; *provided, however, the use of the surface for strip mining or open pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use and eminent domain may not be exercised for this purpose."*

Section 2. There is a new section to be numbered 93-9902.1 which reads as follows:

93-9902.1. For the following reasons the state's power of eminent domain may not be exercised to mine and extract coal owned by the plaintiff located beneath the surface of property where the title to the surface is vested in others:

(1) Because of the large reserves of and the renewed interest in coal in eastern Montana, coal development is potentially more destructive to land and watercourses and underground aquifers and potentially more extensive geographically than the forseeable development of other ores, metals, or minerals, and affecting large areas of land and large numbers of people;

(2) That in many areas of Montana set forth in (a) hereinabove, the title to the surface is vested in an owner other than the mineral owner, and that the surface owner is putting that surface to a productive use, and it is the public policy of the state to encourage and foster such productive use by such owner, and that to permit the mineral owner to condemn the surface owner is to deprive the surface owner of the right to use his property in a productive manner as he determines, and is also contrary to public policy as set forth in paragraph four (4) herein below;

(3) The magnitude of the potential coal development in east-

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ern Montana will subject landowners to undue harassment by excessive use of eminent domain;

(4) That it is the public policy of the state to encourage and foster diversity of land ownership and that the surface mining of coal and control of large areas of land by the surface coal mining industry would not foster public policy and further the public interest.

Approved: March 15, 1973.

CHAPTER NO. 312

An Act to Amend Section 50-704, R.C.M. 1947, to Permit Assessment Work Performed at One (1) Point within a Group of Contiguous Claims to Apply to All Contiguous Claims.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 50-704, R.C.M. 1947, is amended to read as follows:

"50-704. **Recording of affidavit of performance of annual work.** The owner of a lode or placer claim who performs or causes to be performed the annual work, or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the claim, must, within ninety (90) days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which such claim or claims is situated an affidavit of his own, or an affidavit of the person who performed such work or made the improvements, showing:

1. The name of the mining claim or claims;

2. The location of the claim or claims by sections, township, and range (by projected survey lines if located in unsurveyed country);

3. The book and page numbers wherein the original or latest amended relocation for each claim is recorded;

4. The number of days' work done, and the character and value of the improvements placed thereon, or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;

5. The dates between which such work or improvements were effected;

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6. At whose instance the work was done or the improvements made;

7. The actual amount paid for work and improvements, and by whom paid when the same was not done by the owner.

Annual assessment work may be performed or cause to be performed at one (1) or more points within a group of contiguous claims and may be utilized to satisfy annual assessment work requirements upon the group of contiguous claims. If annual assessment work is performed or caused to be performed at one (1) or more points within a group of contiguous claims, the affidavit of performance of assessment work must be filed for the group of claims. The affidavit, in addition to requirements established by this section for affidavits of performance of assessment work, must contain a description and location of the work done upon the group at a point or points within the group, the specific names of all the claims in the group for whose benefit the work was performed, and the total cost of the work performed.

If group work is claimed for a group of claims crossing county lines, the affidavit required by this section shall be filed for recording within the required time in each of the counties in which such claims are located.

An affidavit of performance of annual assessment work must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. Such affidavits, or a certified copy thereof, are prima facie evidence of the facts therein stated. The failure to file such affidavits within the period allowed therefor shall be prima facie evidence that such labor has not been performed and that the owner of the claim or claims has abandoned and surrendered same."

Approved: March 15, 1973.

CHAPTER NO. 313

An Act Amending Section 80-2211, R.C.M. 1947, Relating to the Apprehension and Return of Children Who Have Left a Juvenile Facility of the Department of Institutions Without Permission by Defining the Term "Juvenile Facility of the Department."

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 80-2211, R.C.M. 1947, is amended to read as follows:

"80-2211. **Child leaving juvenile facility without permission—apprehension and return.** A child who has left a juvenile facility of the department without permission may be apprehended and returned by any citizen. *The term "juvenile facility of the department" means any facility under the supervision and control of the Montana state department of institutions, whose primary function is the care, training, custody and control of children and specifically includes the Pine Hills School for boys, the Mountain View School for girls, the Montana Children's Center, Boulder River School and Hospital, the Swan River Youth Forest Camp and Eastmont Training Center."*

Approved: March 15, 1973.

CHAPTER NO. 314

An Act Amending Section 11-1832, R.C.M. 1947, to Provide For An Increase in the Minimum Wage.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-1832, R.C.M. 1947, is amended to read as follows:

"11-1832. **Minimum wage of police in first and second class cities.** *(1) After* July 1, *1973,* each duly confirmed member of *a* police department of cities of the first class of the state of Montana *is entitled to* a minimum wage for a daily service of eight (8) hours' work, of at least *six hundred dollars ($600)* minimum per month for the first year of service, and thereafter of at least *six hundred dollars ($600)* minimum *a* month plus one per cent (1%) of *the* minimum base monthly salary of *six hundred dollars ($600)* for each additional year service up to and including the twentieth year of additional service. *After* July 1, *1973,* each duly confirmed member of *a* police department of cities of the second class of the state of Montana *is entitled to* a minimum wage for a daily service of eight (8) hours' work, of at least *six hundred dollars ($600)* minimum per month for the first year of service, and thereafter of at least *six hundred dollars ($600)* minimum per month plus one per cent (1%) of *the* minimum base monthly salary of *six hundred dollars ($600)* for each additional year service up to and including the twentieth year of additional service.

Approved: March 15, 1973.

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CHAPTER NO. 315

An Act Amending Section 60-145, R.C.M. 1947, to Increase the Privilege and License Tax on the Production of Oil and Gas; and to Require the Payment of a Fee for the Drilling of Stratigraphic Test Wells or Core Holes.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 60-145, R.C.M. 1947, is amended to read as follows:

"60-145. **Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation moneys.** A. For the purpose of providing funds for defraying the expenses of the operation and enforcement of this act, and expenses of said oil and gas conservation commission, the operators and producers of oil and gas shall be required to pay, and they will pay, an assessment not to exceed the amounts set forth in the following schedule on each and every barrel of crude petroleum originally produced, saved and marketed or stored within the state of Montana, or exported from the of Montana, and on each and every ten thousand (10,000) cubic feet of natural gas produced, saved and marketed or stored within the state of Montana, or exported therefrom, to wit:

(1) On leases on which wells are producing an average of twenty-five (25) barrels of crude petroleum per day, or less, an assessment not to exceed *three-eights of one cent (3/8¢)* per barrel;

(2) On leases on which wells are producing an average of more than twenty-five (25) barrels of crude petroleum per day, an assessment not to exceed *three-fourths of one cent (¾¢)* per barrel;

(3) And, on wells producing, saving and marketing, storing, or exporting, natural gas, said operators and producers shall pay an assessment not to exceed *two and one-half (2½)* mills per ten thousand (10,000) cubic feet of natural gas *where said gas is marketed for less than fifteen cents (15¢) per thousand (1,000) cubic feet and an assessment not to exceed five (5) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for fifteen cents (15¢) or more per thousand (1,000) cubic feet.* Such payments shall be made during the time the oil and gas conservation commission is in existence. The commission shall by order, without prior notice and/or hearing, fix the amount of such assessments in the first instance and may, from time to time, without prior notice and/or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require; provided, however, that in no event

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shall the assessments fixed by the commission exceed the said limits hereinabove prescribed. The amounts of such assessments to be fixed by the commission in the first instance and from time to time as herein provided, shall be a percentage factor (not to exceed one hundred per cent (100%)) of the rates set forth in subparagraphs (1), (2) and (3) above, and the same percentage factor shall be used and applied by the commission in fixing the amount of the assessment on each barrel of crude production and each ten thousand (10,000) cubic feet of natural gas mentioned in said subparagraphs (1), (2) and (3) above. The producers of said crude petroleum and natural gas shall pay such assessments on each and every barrel of crude petroleum and each ten thousand (10,000) cubic feet of natural gas produced for themselves, as well as for others, including royalty holders, and said producers shall be reimbursed for such payments made on crude oil and natural gas produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for others as provided for in section 84-6208.

For the purposes of this section, a "lease" shall mean that particularly described tract of land contained in a contract in writing, under seal, whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. Further, for the purposes of this section, leases owned or operated by one lessee which in whole or in part cover or affect an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both, or which are encompassed within or affected by one particular unit agreement shall be considered as one lease relative to payments to be made under this section.

In addition to the above-mentioned privilege and license tax, any person, before commencing the drilling of any oil or gas well *or stratigraphic test well or core hole,* shall secure from the commission a drilling permit and shall pay to the commission therefor the following amounts: for each well whose estimated depth is thirty-five hundred (3,500) feet or less, twenty-five dollars ($25); from thirty-five hundred and one (3,501) feet to seven thousand (7,000) feet, seventy-five dollars ($75); seven thousand (7,000) feet and deeper, one hundred fifty dollars ($150.00).

B. Each producer of crude petroleum in the state of Montana shall, not later than the last day of each of the calendar months of January, April, July and October, of each and every calendar year, render a true statement to the state treasurer of the state of Montana, and a duplicate thereof to the commission, duly signed and sworn to, of all crude petroleum produced by him in this state during the pre-

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ceding three (3) calendar months, and containing such other information as the commission may require, and shall accompany such statement with the payment to the state treasurer of the assessment provided for in subsection A. of this section, above, for the period covered by such statement. Each producer of natural gas in the state of Montana shall render like statements to the state treasurer of all natural gas produced by him in this state, and shall make payment of the assessment provided for in said subsection A. of this section, above, at such times and for such periods as may be prescribed by regulation of the commission. Any producer carrying on business at more than one (1) place or location in this state may include all such places of business in one (1) statement.

C. Any such assessment not paid within the time herein specified shall be delinquent, and a penalty of twenty-five per cent (25%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. Upon request of the commission it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

D. All money collected under the provisions of this act shall be deposited in the earmarked reveune fund by the state treasurer of the state of Montana, and shall be used for the purpose of paying all expenses of said commission and for no other purpose; all such moneys shall be used by said commission subject to the approval of the controller and biennial appropriations by the legislative assembly. Upon the termination of said commission any such money remaining shall be paid over to the general fund of the state. All accounts and expenditures of said commission shall be certified by the commission, approved as provided by law, and paid by the state treasurer.

E. The commission may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers, as may be deemed necessary to perform the duties that may be required of it, and fix their compensation; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of subsection A. of this section, above, plus any amount appropriated for that purpose. The members of the commission shall be allowed their several expenses incurred in the discharge of their duties, as is elsewhere provided in this act."

Approved: March 15, 1973.

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CHAPTER NO. 316

An Act Amending Section 91-4418, R.C.M. 1947, by Requiring the Clerk of the District Court to Pay Estimated Inheritance Tax Collections to the State Department of Revenue Instead of to the County Treasurer.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 91-4418, R.C.M. 1947, is amended to read as follows:

"91-4418. **Refunding of tax—when authorized—manner of refunding—advance payment of tax for relief from penalty and interest.** If any debt shall be proved against the estate of the decedent, after the payment of any legacy or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required by the order of the district court having jurisdiction of the tax so deducted or paid, to refund the amount of such debts or any part thereof, an equitable proportion thereof shall be repaid to such person by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proportionate shares, if it has been so paid.

Any person from whom such tax is or may be due may make an estimate of and pay the same to the clerk of court, who shall receipt therefor, at any time before the same is determined by the court, and shall thereupon be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined. In the event the person making payment has done so in accordance with the provisions of section 91-4416, pertaining to the allowance of a five per cent (5%) discount, the person making payment shall be relieved from any interest or penalty and shall be allowed the five per cent (5%) discount upon the amount which he so declared due as his inheritance tax liability. The tax may be declared to be due by the filing with the clerk of court of a statement of such declaration or by paying the amount estimated by the taxpayer to be due. The money shall be paid to the clerk of the district court who must deposit same with the *state department of revenue. The clerk of the district court shall pay the collections to the state department of revenue on or before the fifth day of the month following the collection.*

As soon as the correct amount of inheritance tax has been determined, any excess so paid shall be refunded to the person so

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paying or entitled thereto by the *state department of revenue* based upon the filing of a properly documented claim by the clerk of court."

Approved: March 15, 1973.

CHAPTER NO. 317

An Act Amending Section 91-4414, R.C.M. 1947, Relating to Exemptions for Inheritance Tax Purposes, by Limiting the Inheritance Tax Exemption Available to "Adopted and Mutually Acknowledged Children" to "Minor Adopted and Mutually Acknowledged Children"; and by Allowing Widowers the Same Inheritance Tax Exemption as Widows.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 91-4414, R.C.M. 1947, is amended to read as follows:

"91-4414. **Exemptions from first $25,000.** The following exemptions from the tax are hereby allowed, the exemption allowed to each person, institution, association, corporation and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic:

(1) Transfers totally exempt. All property transferred to the state or any of its institutions, or to municipal corporations within the state for strictly county, city, town, or municipal purposes, shall be exempt. All property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, shall be exempt, if any of the following conditions is present:

(a) The society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

(b) The property transferred is limited for use within this state;

(c) In the event that the society, corporation, institution, foundation, trust, or association is organized or existing under

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the laws of another state of the United States or of a foreign state or country, at the date of the decedent's death any one of the following conditions existed:

(i) The other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existng under the laws of this state;

(ii) The laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country;

(iii) The society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(2) $20,000; $5,000; $2,000 exempt, when. Property of the clear value of twenty thousand dollars ($20,000), transferred to the wife or to the husband of the decedent, five thousand dollars ($5,000) transferred to each minor lineal issue of the decedent, or any *minor* child adopted as such in conformity with law, or any *minor* child to whom such decedent for not less than ten (10) years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth (15) birthday, and was continuous for ten (10) years, or any *minor* lineal issue of such adopted or mutually acknowledged child, and two thousand dollars ($2,000) transferred to each of the lineal issue who have attained majority and to each of the other persons *who have attained majority* described in the first subdivision of section 91-4409 shall be exempt. Such exemption to the *wife or husband of the decedent* shall include all statutory dower, *curtesy* and other allowances. Any child of the decedent shall be entitled to credit for so much of the tax paid by the *wife or husband* as applied to any property which shall thereafter be transferred by or from such *husband or wife* to any such

child, provided the *husband or wife* does not survive said decedent to exceed ten years.

(3) $500 exempt, when. Property of the clear value of five hundred dollars transferred to each of the persons described in the second subdivision of section 91-4409 shall be exempt.

(4) Property without the state exempt, when. No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, secured or guaranteed, provided such property is not without this state temporarily nor for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state."

Approved: March 15, 1973.

CHAPTER NO. 318

An Act to Permit Newsmen to Refuse to Disclose News Sources; Amending Section 93-701-4, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-701-4, R.C.M. 1947, is amended to read as follows:

"93-701-4. **Persons in certain relations cannot be examined.** There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife without her consent; nor a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other; nor to a criminal action or proceeding for a crime committed by one against the other.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

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3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

6. Any person engaged in teaching psychology in any school, or who acting as such is engaged in the study and observation of child mentality, shall not without the consent of the parent or guardian of such child being so taught or observed testify in any civil action as to any information so obtained.

7. A counselor, psychologist, nurse, or teacher, employed by any educational institution, cannot be examined as to communications made to him in confidence by a duly registered student of such institution, provided however, that this provision shall not apply where consent has been given by the student, if not a minor, or if he is a minor, by the student and his parent or legal guardian.

8. A publisher, editor, reporter or other person connected with or employed upon a newspaper, or by a press association or wire service, or any person who has been so connected or employed, cannot without his consent be examined as to any communication made to him in confidence for the purpose of proper publication nor shall he be adjudged in contempt by a court, the legislature or any administrative body for refusing to disclose the source of any information procured while so connected or employed for publication and published in a newspaper.

Nor can a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, without his consent be examined as to any communication made to him in confidence for the purpose of proper publication nor shall he be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television."

Approved: March 15, 1973.

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CHAPTER NO. 319

An Act Amending Section 84-5606.9, R.C.M. 1947, to Prohibit Sale of Unstamped Cigarettes by a Montana Dealer to a Dealer Who is Not Licensed by the State in Which the Dealer is Doing Business; and Providing an Affective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-5606.9, R.C.M. 1947, is amended to read as follows:

"84-5606.9. **Unlawful acts when license not current and valid** — *sales to licensed wholesalers, subjobbers, retailers and cigarette vendors only* — **misdemeanor — forfeiture.** No person shall sell, offer to sell, or posses with intent to sell, any cigarettes, at wholesale or retail unless his license is current and valid, under the provisions of this act. *No person shall sell, offer to sell or possess with intent to sell, any cigarettes, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, retailer or vendor who is not licensed under this act or who is not licensed by the state in which he sells, offers to sell or intends to sell cigarettes.* Any person violating the provisions of this section is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state."

Section 2. This act is effective on its passage and approval.

Approved: March 15, 1973.

CHAPTER NO. 320

An Act Amending Section 84-1502, R.C.M. 1947, to Specifically Provide that the Deductions for Depreciation and Obsolescence Shall in all Cases Be Determined According to the Provisions of the Internal Revenue Code in Effect for the Taxable Year; and Providing An Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-1502, R.C.M. 1947, is amended to read as follows:

"84-1502. **Deductions allowed in computing income.** In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its

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business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

2. (A) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear *and obsolescence* of property *used in the trade or business, such allowance to be determined according to the provisions of section 167 of the internal revenue code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes.* No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(B) (a) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 84-1502, over the gross income, with the modifications specified in paragraph (b) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three (3) taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five (5) taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in paragraph (b) (ii) of this subsection and by determining the amount of the net operating loss

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deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(b) The modifications referred to in paragraph (a) of this subsection shall be as follows:

(i) No net operating loss deduction shall be allowed.

(ii) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(c) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(d) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger.

In the case of *a* consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the *consolidated corporations prior to the date of consolidation.*

(e) Notwithstanding the provisions of section 84-1508.1 (c), R.C.M., 1947, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(f) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, *such reasonable allowance to be determined according to the provisions of the internal revenue code in effect for the taxable year. All elections made under the internal revenue code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.*

4. The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property or for the conduct of business unless

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the income from such property or business would be taxable under this act.

5. Interest income from obligations of the state of Montana, or any political subdivision or municipality of the state of Montana.

6. Taxes paid within the year except the following: (a) Taxes imposed by this act.

(b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(c) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state."

Section 2. This act is effective for taxable years ending on and after December 31, 1972.

Approved: March 15, 1973.

CHAPTER NO. 321

An Act to Amend Sections 79-410 and 79-415, R.C.M. 1947, to Modify Revolving Fund Appropriation Restrictions.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 79-410, R.C.M. 1947, is amended to read as follows:

"79-410. **Fund structure.** There are in the state treasury only the following funds:

(1) General fund. The general fund consists of all moneys deposited in the state treasury which are available to defray the general costs of state government and which do not fall into one of the categories enumerated below.

(2) Earmarked revenue fund. The earmarked revenue fund consists of moneys from state sources deposited in the state treasury which are specifically earmarked by law for the purpose of defraying the costs of a particular agency, program, or function of state government.

(3) Sinking fund. The sinking fund consists of moneys deposited in the state treasury for the payment of principal and

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interest, and the accumulation of reserves for bonded or other indebtedness.

(4) Federal and private revenue fund. The federal and private revenue fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which are to be used for the operation of state government.

(5) Federal and private grant clearance fund. The federal and private grant clearance fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which the state disburses to persons, associations or units of local government. When the final disposition of expendable federal or private moneys is unknown at the time of receipt, they shall be deposited in the federal and private grant clearance fund; but those moneys to be used for the operation of state government shall be transferred to the federal and private revenue fund prior to disbursement.

(6) Bond proceeds and insurance clearance fund. The bond proceeds and insurance clearance fund consists of

(a) Moneys deposited in the state treasury obtained from the sale of bonds, certificates of indebtedness or similar obligations.

(b) Moneys indemnifying the state for loss or damage of property.

(7) Revolving fund. The revolving fund consists of moneys used to

(a) Defray reimbursable expenditures, and

(b) Supply working capital for enterprise-type operations.

(8) Trust and legacy fund. The trust and legacy fund consists of moneys deposited in the state treasury which the state administers as a trustee pursuant to a law or a trust agreement restricting the use of the money for a specified purpose and prohibiting the expenditure of the principal for a period of at least five (5) years.

(9) Agency fund. The agency fund consists of moneys deposited in the state treasury which are held and disbursed by the state as a custodian or agent, and includes, but not limited to moneys held for the purpose of paying insurance or retirement benefits, moneys arising from lost or unclaimed property, and other moneys of a similar nature."

Section 2. Section 79-415, R.C.M. 1947, is amended to read as follows:

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"79-415. Appropriation and disbursement of moneys from the treasury. (1) Moneys deposited in the general fund, the earmarked revenue fund, and the federal and private revenue fund, with the exception of trust income and refunds authorized in subsection (3) of this act, shall be paid out of the treasury only on appropriation made by law. *Moneys deposited in the revolving fund for the purpose of financing administrative operations shall be paid out of the treasury only by appropriation made by law. Moneys deposited in the revolving fund for the purpose of purchasing consumable or depreciable assets may be expended within the limitations of an annual financial plan approved by the department of administration.*

(2) Moneys deposited in the federal and private grant clearance fund, the sinking fund, the bond proceeds and insurance clearance fund, the trust and legacy fund and the agency fund may be paid out of the treasury under general laws, or contracts entered into in pursuance of law, permitting such disbursement.

(3) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it, and a refund procedure is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by the state controller.

(4) For the purpose of supplying deficiencies in the general fund, the state treasurer may temporarily borrow from other treasury funds, providing that the loan is recorded in the state accounting records. Such loan shall bear no interest and no fund shall be so impaired that all proper demands thereon cannot be met."

Approved: March 15, 1973.

CHAPTER NO. 322

An Act Authorizing the Department of Social and Rehabilitation Services to Purchase Vocational Rehabilitation Services for Handicapped Persons; Authorizing the Department to Promulgate Rules and Regulations Under This act; and Providing for the Expenditure of Funds for this Purpose.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The purpose of this act is to encourage the development, improvement and expansion of sheltered employment and supervised work programs for mentally retarded, severely handicapped and disadvantaged individuals to enable them to become contributing and self-supporting members of society as an alternative to dependency.

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The condition of the mentally retarded, severely handicapped and disadvantaged is such that after laborious training in the schools and otherwise they reach the point in their lives where they can and should, under proper and continued guidance, engage in sheltered employment or supervised work to help them become contributing members of society instead of being dependent. For such persons, retention in sheltered employment or supervised work may constitute satisfactory placement. Such training and placement is often a suitable alternative to institutionalization or idleness and its consequences. By keeping these individuals within their communities and in touch with their families, a worthwhile dimension is added to their lives and they are thus spared the anxieties naturally attached to separation. All of these factors have also been shown to reflect tangible benefits upon the mentally retarded, severely handicapped or disadvantaged person by improving his overall well-being.

Section 2. (1) "Handicapped person" means any individual:

(a) who has a physical or mental disability, which constitutes a substantial handicap to employment, of such a nature that vocational rehabilitation services may reasonably be expected to render him fit to engage in a gainful occupation consistent with his capacities and abilities; or

(b) who, because of lack of social competence or mobility, experience, skills, training or other factors, is in need of vocational rehabilitation services in order to become fit to engage in a gainful occupation or to attain or maintain a maximum degree of self-support or self-care; or

(c) for whom vocational rehabilitation services are necessary to determine rehabilitation potential.

(2) "Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's activities or functioning. The term includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental or other factors.

(3) "Vocational rehabilitation services" means goods or services provided handicapped persons to enable such persons to be fit for gainful occupation or to attain or maintain a maximum degree of self-support or self-care and includes every type of goods and services for which federal funds are available for vocational rehabilitation purposes, including, but not limited to,

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the establishment, construction, development, operation and maintenance of workshops and rehabilitation facilities.

(4) "Self-care" means a reasonable degree of restoration from dependency upon others for personal needs and care and includes but is not limited to ability to live in own home, rather than requiring nursing home care and care for self rather than requiring attendant care.

(5) "Department" means the department of social and rehabilitation services.

Section 3. (1) The department may purchase, from any source, by contract, vocational rehabilitation services for handicapped persons, payments for such services to be made subject to procedures and fiscal controls approved by the department of administration. The performance of and payment for such services shall be subject to post audit review by the state auditor.

(2) Notwithstanding any other provision of this act, when the department determines that a mentally retarded, severely handicapped or disadvantaged person can reasonably be expected to benefit from, or in his best interests reasonably requires extended sheltered employment or supervised work furnished by an approved nonprofit organization, the department is authorized to contract with such organization for the furnishing of such sheltered employment or supervised work to such mentally retarded, severely handicapped or disadvantaged person. The department is authorized to expend for or toward the cost of providing such sheltered employment or supervised work a sum or sums not to exceed one thousand five hundred dollars ($1,500) per annum for each such mentally retarded, severely handicapped or disadvantaged person in order to maintain him as a contributing and self-supporting member of society as an alternative to dependency; provided, that the department is authorized to extend in excess of one thousand five hundred dollars ($1,500) per annum for each such mentally retarded, severely handicapped or disadvantaged person when federal or other funding becomes available to the state agency for such purpose and such additional expenditures may continue as long as the additional federal or other funding is or becomes available.

(3) The determination of eligibility for such service shall be made for each individual by the department.

(4) The department shall maintain a register of nonprofit organizations which it has inspected and certified as meeting required standards and as qualifying to serve the needs of such mentally retarded, severely handicapped or disadvantaged per-

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sons. Eligibility of organizations to receive the funds specified by this act shall be based upon standards and criteria promulgated by the department.

(5) The department is authorized to promulgate such rules and regulations as it may deem necessary or proper to carry out the provisions of this section.

Section 4. Federal funds as may be available are appropriated to the department for use in administering the provisions of this act.

Approved: March 15, 1973.

CHAPTER NO. 323

An Act for the Codification and General Revision of the Laws Relating to the Public Employees' Retirement System and Repealing Sections 68-101, 68-102, 68-201, 68-202, 68-203, 68-301, 68-302, 68-303, 68-401 through 68-405, 68-501, 68-601, 68-602, 68-603, 68-701 through 68-710, 68-801, 68-802, 68-901, 68-902, 68-1001 through 68-1005, 68-1101, 68-1201 and 68-1301 through 68-1320, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act may be cited as "The Public Employees' Retirement System Act."

Section 2. There is a new section to be numbered 68-1501, R.C.M. 1947, which reads as follows:

68-1501. The purpose of this act is to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship, or prejudice, be replaced by more capable employees, and to that end providing a retirement system consisting of retirement compensation and death benefits.

Section 3. There is a new section to be numbered 68-1502, R.C.M. 1947, which reads as follows:

68-1502. A retirement system is created and established to become effective July 1, 1945, and to be known as the public employees' retirement system.

Section 4. There is a new section to be numbered 68-1503, R.C.M. 1947, which reads as follows:

68-1503. Unless the context requires otherwise, in this act:

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(1) "Retirement system" means the public employees' retirement system created by this act.

(2) "Head of department" means the head of any department, institution or branch of the state service which directly pays salaries out of its income or which prepares, approves and submits salary statements of its employees to the department of administration, state auditor and state treasurer for payment.

(3) "Member" means any person included in the membership of the retirement system set forth in section 68-1602 and not excluded in section 68-1603 or 68-2510.

(4) "Board" means the board of administration provided for in section 82A-210.

(5) "Employee" means any person employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person deemed such pursuant to section 68-2510.

(6) "Retirement fund" means the public employees' retirement account in the agency fund.

(7) "Service" means employment of an employee, except as provided in sections 68-1604 and 68-1605.

(8) "Prior service" shall mean all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of the state of Montana.

(9) "Beneficiary" means the person so designated pursuant to section 68-2401.

(10) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislative assembly and the lieutenant governor of the state of Montana for any year shall be deemed to be that portion of the product of the daily compensation for such position multiplied by three hundred sixty (360), upon which such member elects to pay normal contributions during the year.

(11) "Final compensation" means a member's highest average annual compensation during any three (3) consecutive years of membership service.

(12) "Regular interest" means interest at the rate set from time to time by the board.

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(13) "Normal contributions" means contributions required by members under this act and any optional contributions, made under the provisions of sections 68-1605 and 68-1906.

(14) "Additional contributions" means contributions by members under the provisions of section 68-1903.

(15) "Accumulated normal contributions" means the sum of all the normal contributions standing to the credit of a member's individual account without interest.

(16) "Accumulated additional contributions" means the sum of all the additional contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(17) "Accumulated contributions" means the sum of accumulated normal contributions and accumulated additional contributions.

(18) "Pension" means payments for life derived from contributions made from the state controlled funds, or in the case of members from contracting employers, from the funds of such contracting employers, as provided in this act.

(19) "Annuity" means payments for life derived from contributions made by a member as provided in this act.

(20) "Retirement allowance" means the periodic benefit payable following service, early or disability retirement.

(21) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(22) "Actuary" means the actuary retained by the board in accordance with section 68-1804.

(23) "Benefit" means the retirement allowance, survivorship allowance, death benefit or refund of accumulated contributions provided by this act.

(24) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.

(25) "Employer" means the state of Montana, its university or any of the colleges, schools, components or units thereof for the purposes of this act, or any political subdivision or governmental entity which has contracted to come into the system.

(26) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislative assembly and a lieutenant governor

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of the state of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to section 68-1503 (10).

(27) "Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in title 68, chapter 23.

(28) "Creditable service" means the aggregate of membership service and prior service. A member employed on a part-time basis shall receive credit for a year of service for each fiscal year during which such member was employed throughout the year and was engaged in his duties the full amount of time he was required by his employment to be so engaged.

(29) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to section 68-2504 and from contracting employers pursuant to the contracts between them and the board.

(30) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board shall deem necessary.

(31) "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this act.

(32) "Disability" and "incapacity for performance of duty" referred to herein as a basis of retirement, means disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(33) "Fiscal year" means any year commencing with July 1 and ending June 30 next following.

Section 5. There is a new section to be numbered 68-1601, R.C.M. 1947, which reads as follows:

68-1601. (1) All employees shall become members on the first day of employment. Each employee shall file with the board of administration such information affecting his status as a member of the retirement system as the board may require.

(2) Every employee who reenters service shall become a member unless he has had an original election of exemption from membership and his service was not interrupted by a break of more than one (1) month. A seasonal employee who has had an original election of exemption from membership will not be subject to the requirement regarding the break in service while continuing in his

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original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than one (1) month in returning to original employment in any ensuing season, such a seasonal employee shall become a member of the retirement system upon reentry.

(3) Time during which an employee of a school district is absent from service during official vacation shall be counted as service in determining eligibility for membership under this act.

Section 6. There is a new section to be numbered 68-1602, R.C.M. 1947, which reads as follows:

68-1602. The following persons shall not become members of the retirement system:

(1) elective officers who have not filed with the board of administration written requests to become members; provided that any person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office; and provided further that if he shall affirmatively exercise the option, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors unless written contract specifies the creation of an employer-employee relationship for purposes of retirement coverage under the Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of sixty (60) working days in any fiscal year;

(6) employees in service on July 1, 1945, or prior thereto who filed with the board of administration an election not to become members; provided, any person so excluded from membership by his own election may become a member by meeting the requirements of the balance of this subsection. Such a person must file an election to become a member with the board of administration no later than July 1, 1975; provided, that any such person who is not an employee on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming an employee. In either event, such person must thereupon pay to the retirement system the amount which he and his employer would have contributed had he not been so excluded plus interest which

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would have accumulated thereon. All benefits payable thereafter to such person shall be the same as if such person had never filed an election not to be a member;

(7) persons directly appointed by the governor, who do not file with the board of administration an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government or political subdivision thereof and who are receiving credit in such other system for service, it being the purpose of this section to prevent a person from receiving credit for the same service in two (2) retirement systems supported wholly or in part by public funds, and no person shall receive such credit under any circumstances; any member of the retirement system who, because of his employment by the state, shall be required to become a member of any such other systems, shall be considered solely for the purposes of making normal contributions as permanently separated from service; the accumulated contributions of any member who shall have died after becoming a member of such other system and before receiving said accumulated contributions, shall be paid to the beneficiary nominated by him to receive any death benefit payable under section 68-2301; employer contributions on the basis of compensation earned by members after the effective date of termination of membership herein because of the membership in such other system, shall be repaid to the employer; for the purpose of this section, persons receiving pensions, retirement allowances or other payments, from any source, on account of employment other than as an employee as defined in this act, shall not be considered, because of such receipt, members of any other retirement or pension system;

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their sixtieth birthday and have no creditable service in this system, and who do not file with the board of administration an election to become members;

(11) employees of county hospitals or county rest homes in the sixth and seventh class counties unless they elect to file with the board of administration an election in writing to become members.

Section 7. There is a new section to be numbered 68-1603, R.C.M. 1947, which reads as follows:

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68-1603. If any part of a member's accumulated normal contributions are refunded pursuant to section 68-1905, he ceases to be a member and all membership service to his credit is canceled. Any person who is retired ceases to be a member.

Section 8. There is a new section to be numbered 68-1604, R.C.M. 1947, which reads as follows:

68-1604. Except as provided in section 68-1605 and 68-1606, time during which a member is absent from compensated employment with an employer shall not be allowed in computing service.

Section 9. There is a new section to be numbered 68-1605, R.C.M. 1947, which reads as follows:

68-1605. Any period of absence from compensated employment with an employer occurring either during a war involving the United States as a belligerent or in any other national emergency, and for ninety (90) days thereafter for one of the following reasons shall be considered as service, for the purpose of qualification for retirement and death benefits, but not for calculation of retirement benefits:

(1) by reason of having been ordered on duty with the armed forces of the United States;

(2) by reason of voluntary service in said forces or on ships operated by or for the United States government; or

(3) by reason of direct assignment to the department of war or defense for duties pursuant to the national defense efforts where a leave of absence has been granted by the employer.

Any member so absent shall have the right to contribute to the retirement system, either during his period of absence or upon his return to service, at times and in the manner fixed by the board of administration, amounts equal to the contribution which would have been made by him to the system on the basis of his compensation at the commencement of his absence. If he does so contribute he shall receive credit for service for such time in the same manner as if he had not been absent from service. Whenever a member elects to continue his contributions the employer shall thereupon contribute an amount equal to what its employer contributions would have been had the member not been absent from service.

Any member so absent shall lose the right to contribute under this section if all of his accumulated normal contributions are refunded pursuant to section 68-1905.

Section 10. There is a new section to be numbered 68-1605.1, R.C.M. 1947, which reads as follows:

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68-1605.1. A member with ten (10) years or more of state service credited under this act may at any time prior to retirement make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits up to a maximum of five (5) years if he is not otherwise eligible to receive credit for this same service pursuant to section 68-1605. To qualify this service he must contribute to the retirement fund the amount determined by the board to be due based on his compensation and normal contribution rate as of his eleventh year and as many succeeding years as are required to qualify this service with interest from the date he becomes eligible for this benefit to the date he so contributes. He may not qualify more of this service than he has state service in excess of ten (10) years.

Section 11. There is a new section to be numbered 68-1606, R.C.M. 1947, which reads as follows:

68-1606. Time during which a member is absent from service by reason of injury or illness determined within one (1) year after the end of such absence as arising out of and in the course of his employment shall be considered as spent in service for the purpose of qualification for retirement benefits or survivorship allowances, but not for the calculation of such benefits.

Section 12. There is a new section to be numbered 68-1607, R.C.M. 1947, which reads as follows:

68-1607. Subject to the provisions of this section, any person who has service with a contracting employer which is not creditable service may convert all or a portion of such service to membership service by filing written notice thereof with the board of administration no later than July 1, 1975; provided that any such person who is not a member on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming a member. In either event, such person must pay to the retirement system the sum of the amount which he and his employer would have contributed during the period of service so converted if the employer had then been a contracting employer and the interest which would have accumulated thereon to the time of such payment; provided, that the employer may pay the employer's portion including accrued interest. Payment may be made in one sum at the time of such filing or on an installment basis thereafter, except that failure to make installment payments of at least ten percent (10%) of compensation in any payroll period thereafter shall forfeit such person's right to make any further installments.

Section 13. There is a new section to be numbered 68-1608, R.C.M. 1947, which reads as follows:

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68-1608. Credit for any prior service not previously granted shall be granted to a member upon his filing written notice thereof with the board of administration no later than July 1, 1975; provided, that any such person who is not a member on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming a member and further provided he otherwise has not less than ten (10) years of creditable service of which not less than three (3) years have been as a contributing member of the retirement system. Proper certification of such service must be furnished.

Section 14. There is a new section to be numbered 68-1701, R.C.M. 1947, which reads as follows:

68-1701. Any municipal corporation, county or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of said contracting employer, subject to the provisions of this act. The contract may include any provisions which are consistent with this act and necessary in the administration of the retirement system as it affects the contracting employer and its employees. The approval and termination of the contract shall be subject to the following provisions, in addition to the other provisions of this act.

(1) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract shall not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at such election shall include the summary of the retirement system as set forth in the resolution. The election shall be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract shall be by ordinance adopted by the affirmative vote of two-thirds (⅔) of the members of the legislative body, not less than twenty (20) days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting thereon.

(2) The contract shall specify that all employees of the contracting employer or such groups of employees as agreed to between the board and the contracting employer shall become members. The groups of employees to be included shall be by departments, duties, age or other similar classifications and not by individual employees. The board shall have the right to disapprove any classification into groups if in its opinion said classification

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affects adversely the interest of the retirement system. Membership in the retirement system shall be compulsory for all employees included under the contract.

(3) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment.

Section 15. There is a new section to be numbered 68-1702, R.C.M. 1947, which reads as follows:

68-1702. Any employee who has continuously been, for a period of at least two (2) years, an employee of a municipal corporation, county or other public agency of this state which is not a contracting employer may advise the legislative body of his employer, in writing, that he wishes to participate in the retirement system. Within thirty (30) days after receipt of such written request, the legislative body shall thereupon adopt the resolution of intention and take such action as provided for in section 68-1701.

Section 16. There is a new section to be numbered 68-1703, R.C.M. 1947, which reads as follows:

68-1703. Should the legislative body of any city, county or public agency having an existing retirement, pension or annuity fund or system, hereafter referred to as the local system, desire to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board of administration in the manner provided in section 68-1701 provided, however, that the employees voting as provided in subsection (1) of section 68-1701 shall be limited to active members of the local system and approval shall require an affirmative vote of two-thirds (⅔) of such employees.

All active members of the local system shall become members of the retirement system and shall no longer be members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract shall be continued and paid at their existing rates by the public employees' retirement system. The liability for such pensions shall be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system shall be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of said securities shall be determined by the board of administration.

The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion,

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if any, of the funds of the system that represents the accumulated contributions of the active members, and the relative shares of the members as of that date. Such shares shall be charged to the employer and credited to the respective individual accounts of such members in the public employees' retirement system and administered as if said contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section shall be payable by the contracting employer, with interest, on a monthly basis as specified in the contract.

Section 17. There is a new section to be numbered 68-1704, R.C.M. 1947, which reads as follows:

68-1704. If the contributions required to the retirement system exceed the funds available to a contracting employer from general revenue sources, the contracting employer shall have authority to budget, levy and collect annually a special tax upon the assessable property of the contracting employer in the number of cents per one hundred dollars ($100) of assessable property as will be sufficient to raise the amount estimated by the legislative body to be required to provide sufficient revenue to meet the obligation of the contracting employer to the retirement system. The rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied by the contracting employer. Any person who is a member or beneficiary of the retirement system on account of the participation of the contracting employer shall have the right to maintain the appropriate action or proceeding to require performance of the duty imposed on the legislative body by this section.

Section 18. There is a new section to be numbered 68-1801, R.C.M. 1947, which reads as follows:

68-1801. The board shall maintain its office in the city of Helena. A quorum of the board shall be three (3) members. The board shall elect one of its members president. The board may appoint a committee of one or more of its members, which shall have authority to perform routine acts, such as retirement of members and fixing of retirement allowances, approval of death claims and correction of records necessary in the administration of the system in accordance with the provisions of this act and rules and regulations of the board. The department of administration shall appoint and fix the compensation of the administrator and other necessary employees. The attorney general shall be the legal counsel for the board.

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Section 19. There is a new section to be numbered 68-1802, R.C.M. 1947, which reads as follows:

68-1802. The actual and necessary expenses of members of the board shall be reimbursed by the retirement system. Those members of the board who are not members of the retirement system shall be entitled to receive in addition to actual and necessary expenses compensation at the rate of twenty-five dollars ($25) per day. All expenses of the administration of this act in excess of the amounts provided by the membership fees contributed pursuant to section 68-1904 shall be a charge on the appropriation made from the general fund of the state.

Section 20. There is a new section to be numbered 68-1803, R.C.M. 1947, which reads as follows:

68-1803. (1) The board of administration may establish such rules and regulations as it deems proper for the administration and operation of the retirement system and enforcement of this act, subject to its limitation. The board shall determine who are employees within the meaning of this act. The board shall be the sole authority under this act as to the conditions under which persons may become members and receive benefits under the retirement system. The board shall determine and may modify allowances for service and disability under this act. The board shall establish those uniform rules and regulations as are necessary to determine credit for fractional years of service. The board shall maintain such records and accounts it determines necessary for the administration of this act. Upon the basis of the findings of the actuary pursuant to section 68-1804, the board shall adopt those actuarial tables and those rates of regular interest it determines appropriate to comply with the provisions of this act.

(2) As soon as practical after the close of each fiscal year, the department of administration shall file with the governor a report of its work for that fiscal year. The report shall include a statement as to the accumulated cash and securities in the retirement fund as certified by the state treasurer and the board of investment. The report shall also include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of the system.

Section 21. There is a new section to be numbered 68-1804, R.C.M. 1947, which reads as follows:

68-1804. The board shall retain on a full-time basis, a competent actuary who is a member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary shall be the technical advisor of the board on matters

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regarding the operation of the system. Biennially he shall make an actuarial investigation into the suitability of the actuarial tables used by the system and an actuarial valuation of the assets and liabilities of the retirement system. From time to time, he shall also determine the rate of interest being earned on the retirement fund. He shall report his findings to the board.

Section 22. There is a new section to be numbered 68-1901, R.C.M. 1947, which reads as follows:

68-1901. The retirement fund shall be managed as follows:

(1) The board of administration shall have exclusive control of the administration of the fund except as otherwise provided.

(2) The fund shall be invested by the state board of investments as part of the long-term investment fund.

(3) The department of administration shall deposit monthly in the state treasury all amounts received by it as provided in this act.

(4) The state treasurer shall be custodian of the retirement fund, subject to the exclusive control of the board of administration as to the administration thereof and the board of investments as to the investment thereof.

(5) Interest earned on any cash deposit in a bank by the state treasurer and income on other assets constituting a part of the fund shall be paid into the fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year, in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(6) Except as herein provided, no member and no employee of the department of administration shall have any interest direct, or indirect, in the making of any investment, or in the gains or profits accruing therefrom. And no member or employee of the department directly or indirectly, for himself or as an agent or partner of others, may borrow any of its funds or deposits, nor shall any member or employee in any manner use the same except to make such current and necessary payments as are authorized by the department nor shall any member or employee of the department become an endorser or surety as to or in any manner an obligor for investments for the retirement system.

Section 23. There is a new section to be numbered 68-1902, R.C.M. 1947, which reads as follows:

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68-1902. The normal contribution of each member shall be equal to five and seventy-five one hundredths percent (5.75%) of his compensation. The chief administrative officer of each employer shall deduct the contribution from the compensation of each member and remit the total of the contributions to the board. Payment of salaries or wages less the contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this act.

Section 24. There is a new section to be numbered 68-1903, R.C.M. 1947, which reads as follows:

68-1903. Subject to the rules and regulations promulgated by the board of administration, any member may elect to contribute at rates in excess of those provided for in section 68-1902 for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting employer any additional financial obligation. The board, upon application shall furnish to the member information concerning the nature and amount of additional benefits to be provided by additional contributions.

Section 25. There is a new section to be numbered 68-1904, R.C.M. 1947, which reads as follows:

68-1904. In addition to the contributions elsewhere provided in this act, on July 1 of each year each employer shall contribute on behalf of each member then in its employ a membership fee of one dollar ($1). These fees together with other moneys appropriated for that purpose shall be used for the purpose of defraying the administrative expense of this act.

Section 26. There is a new section to be numbered 68-1905, R.C.M. 1947, which reads as follows:

68-1905. (1) Except as provided in this section, any member whose service has been discontinued by other than death or retirement shall be paid such part of his accumulated contributions as he requests. If he has ten (10) or more years of creditable service, the amount paid shall include regular interest on the accumulated normal contributions. If he has less than ten (10) years of service and he does not reenter service for a period of five (5) years after such discontinuance, he shall automatically be paid any portion of his total accumulated contributions not previously withdrawn. Upon qualification for any other benefit under this act, a member having any accumulated normal contributions standing to his credit in the retirement fund shall receive

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the benefit based upon the creditable service during which such contributions were made. The board may, in its discretion, withhold for not more than one (1) year after a member last rendered service, all or part of his accumulated normal contributions if after a previous discontinuance of service he withdrew all or part of his normal contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in section 68-1906.

(2) Should the state service of any member, regardless of years of service, be discontinued other than by death or retirement after July 1, 1974, he shall be paid such part of his accumulated contributions, including regular interest thereon, as he requests.

Section 27. There is a new section to be numbered 68-1906, R.C.M. 1947, which reads as follows:

68-1906. Except as otherwise provided in this section, any person who again becomes a member subsequent to the refund of his accumulated normal contributions after a termination of previous membership is considered a new member without credit for any previous membership service, and he may reinstate that membership service by redepositing, within two (2) years of his reentering the retirement system, the sum of the accumulated normal contributions which were refunded to him at the last termination of his membership plus the interest which would have been credited to his account had the refund not taken place. If he makes this redeposit, his membership shall be the same as if unbroken by such last termination. Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership shall be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents shall continue unchanged until changed as provided herein.

Section 28. There is a new section to be numbered 68-1907, R.C.M. 1947, which reads as follows:

68-1907. The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent reentry to membership.

Section 29. There is a new section to be numbered 68-2001, R.C.M. 1947, which reads as follows:

68-2001. (1) A member who has attained the age of sixty (60) and completed ten (10) years of creditable service is eligible for service retirement. A member who has attained age sixty-five (65)

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is eligible for service retirement regardless of his years of creditable service. A member who has completed thirty (30) years or more of state service is eligible for service retirement regardless of his age.

(2) A member who is not eligible for service retirement but has attained age fifty-five (55) and completed ten (10) years of creditable service is eligible for early retirement.

Section 30. There is a new section to be numbered 68-2002, R.C.M. 1947, which reads as follows:

68-2002. The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of section 68-2001 and filed the appropriate written application. The retirement allowance shall commence on the day following the member's last day of membership service or on the first day of the month in which his application is filed with the board, whichever is later.

Section 31. There is a new section to be numbered 68-2003, R.C.M. 1947, which reads as follows:

68-2003. The annual amount of retirement allowance payable to a member following his service retirement is the sum of (1), (2) and (3) as follows:

(1) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(2) one sixty-fifth (1/65) of his final compensation multiplied by the number of years of his creditable service;

(3) any retirement allowance payable under section 68-2004.

Section 32. There is a new section to be numbered 68-2004, R.C.M. 1947, which reads as follows:

68-2004. The annual amount of retirement allowance payable to a person who was a member on July 1, 1973, shall be increased by the excess, if any, of the greater of (1) or (2) as follows over subsection (2) of section 68-2003;

(1) the sum of a pension for prior service equal to one sixty-fifth (1/65) of his final compensation multiplied by the number of years of his prior service, an annuity which is the actuarial equivalent of his accumulated normal contributions with regular interest to the day his retirement allowance commences, and a pension for membership service equal to such annuity;

(2) if the member attained age seventy (70) in service, the

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lesser of four hundred eighty dollars ($480) or one-half (½) of his final compensation.

Section 33. There is a new section to be numbered 68-2005, R.C.M. 1947, which reads as follows:

68-2005. The annual amount of retirement allowance payable to a member following his early retirement is the actuarial equivalent of the accrued portion of the service retirement allowance which would have been payable to him commencing at age sixty (60) pursuant to section 68-2003.

Section 34. There is a new section to be numbered 68-2101, R.C.M. 1947, which reads as follows:

68-2101. (1) A member who has not reached seventy (70) years of age but has become disabled for duty-related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(2) A member who is not eligible for service or early retirement but has completed ten (10) years of creditable service and has become disabled while in active service for other than duty-related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(3) "Disabled" means unable to perform his duties by reason of physical or mental incapacity.

(4) "Duty-related" means as a result of an injury or disease arising out of or in the course of his employment with an employer.

(5) "Injury" means a tangible happening of a traumatic nature from an unexpected cause, or unusual strain, resulting in either external or internal physical harm, and such physical conditions as result therefrom, and excluding disease not traceable to injury.

(6) The board shall determine whether a member has become disabled and whether a disabled member became disabled for duty-related reasons. In the discharge of its duty regarding such determinations, the board, any member thereof or any duly authorized representative of the board shall have power to order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, coorespondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. The board shall secure medical service and advice necessary to carry out the purposes of this section and of sections

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68-2201 and 68-2202 and shall pay for those medical services and advice compensation the board deems reasonable.

(7) A member eligible for early retirement may conditionally waive such eligibility by written application, such waiver to be effective only upon approval by the board of his application for disability retirement.

Section 35. There is a new section to be numbered 68-2102, R.C.M. 1947, which reads as follows:

68-2102. The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of section 68-2101 and duly filed the appropriate written application. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed or by any other person on behalf of the member, or the board upon its own motion may make the application. Application must be made within four (4) full months after the member's discontinuance of service unless the member is disabled continuously from the date of discontinuance of service to the date of the application.

The retirement allowance payable to a member who has become disabled shall commence on the day following the member's last day of membership service.

Section 36. There is a new section to be numbered 68-2103, R.C.M. 1947, which reads as follows:

68-2103. The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons is fifty percent (50%) of his final compensation; provided, however, that the annual amount of retirement allowance shall be twenty-five percent (25%) of final compensation for any period during which the member has been awarded compensation by the workmen's compensation division, whether or not such compensation is received in periodic payments or in a lump sum; provided further, that the annual amount of retirement allowance shall revert to fifty percent (50%) of final compensation at the end of such period.

Section 37. There is a new section to be numbered 68-2104, R.C.M. 1947, which reads as follows:

68-2104. The annual amount of retirement allowance payable to a member eligible for disability retirement for other than duty-related reasons is the sum of (1), (2) and (3) as follows:

(1) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

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(2) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

(3) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct or violation of law on the part of the member, a pension which is the lesser of (a) or (b) as follows:

(a) a pension which, together with the annuity provided under (2), shall make the retirement allowance equal to ninety percent (90%) of one sixty-fifth (1/65) of his final compensation multiplied by his years of creditable service;

(b) a pension equal to twenty-five percent (25%) of his final compensation.

Section 38. There is a new section to be numbered 68-2201, R.C.M. 1947, which reads as follows:

68-2201. (1) The board may, at its pleasure, require the recipient of a retirement allowance because of disability to undergo medical examination. The examination shall be made by a physician or surgeon appointed by the board, at the place of residence of the recipient or another place mutually agreed upon. Upon the basis of the examination the board shall determine whether said recipient is unable, by reason of physical or mental incapacity, to perform either the duties of the position held by him when he was retired or the duties proposed to be assigned to him. If the board determines that said recipient is not so incapacitated or if the recipient refuses to submit to medical examination, his retirement allowance shall be canceled.

(2) Any person whose retirement allowance is so canceled shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity, if he had been an employee of the state or of the university. If he had been an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the retirement allowance has been canceled and that the former employee is eligible for reinstatement to duty. The fact that he was retired for disability shall not prejudice any right to reinstatement to duty which he may have or claim to have.

(3) If any person whose retirement allowance is so canceled is not reemployed in a position subject to the retirement system, his service shall be deemed to be discontinued coincident with his retirement allowance for the purposes of section 68-1905.

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Section 39. There is a new section to be numbered 68-2202, R.C.M. 1947, which reads as follows:

68-2202. Should the recipient of a retirement allowance because of disability engage in a gainful occupation during any month other than as an employee as defined in section 68-1503, the amount of his pension for that month shall be reduced to an amount which, when added to the compensation earned by him in that occupation, shall not exceed the amount of his monthly compensation at the time of his retirement.

Section 40. There is a new section to be numbered 68-2203, R.C.M. 1947, which reads as follows:

68-2203. (1) The retirement allowance of a member who so elects shall be converted, in lieu of all other benefits under this act, into an optional retirement allowance which is the actuarial equivalent of such other allowance. The optional retirement allowance is a reduced amount payable during the member's lifetime with a subsequent benefit as follows:

(a) Option 1—a death benefit to the member's beneficiary equal to the excess, if any, of the member's accumulated contributions with regular interest to the day his retirement allowance commenced over the total of his retirement allowance payments.

(b) Option 2—a continuation of the reduced retirement allowance during the lifetime of his named contingent annuitant.

(c) Option 3—a continuation of one-half (½) of the reduced retirement allowance during the lifetime of his named contingent annuitant.

(d) Option 4—an actuarial equivalent benefit based on the life of a single designated beneficiary.

(e) Option 5—such other actuarially equivalent benefit as shall be approved by the board.

(2) Election of any optional retirement allowance shall be by written application filed prior to the first payment of the regular retirement allowance. The contingent annuitant named by the member must have an insurable interest in the life of the member.

(3) If either the member or his contingent annuitant should die before the member has received the first payment under option 2 or 3, the election of such option shall automatically be canceled.

(4) If a member dies after retirement and within thirty (30) days from the date his election or changed election of an optional retirement allowance is received by the board, then said

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election is void and of no effect, and the death shall be considered as that of a member before retirement.

Section 41. There is a new section to be numbered 68-2204, R.C.M. 1947, which reads as follows:

68-2204. Any person receiving a retirement allowance who becomes an employee shall be considered reinstated from retirement and his retirement allowance shall be canceled. Upon subsequent retirement he shall be entitled to receive a recalculated benefit as provided in section 68-2003. Such recalculated benefit shall be based on his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated subsequent to his reemployment. Except as otherwise expressly provided by law, he shall receive the benefit of provisions enacted subsequent to his initial retirement only if he accrues at least two (2) years of creditable service subsequent to his reinstatement and then only with respect to such creditable service.

Section 42. There is a new section to be numbered 68-2301, R.C.M. 1947, which reads as follows:

68-2301. The board shall grant a death benefit to the beneficiary of any member or former member who dies in any of the following statuses:

(1) while in service;

(2) within four (4) months after the discontinuance of service but before retirement;

(3) while a recipient of a retirement allowance because of disability, if such allowance has been in effect less than four (4) months;

(4) while disabled, as defined in section 68-2101, if he has been continuously so disabled from the discontinuance of his service but he is not receiving a retirement allowance because of the disability.

Section 43. There is a new section to be numbered 68-2302, R.C.M. 1947, which reads as follows:

68-2302. The amount of death benefit is the sum of (1) and (2), as follows:

(1) the member's accumulated contributions, together with regular interest on the accumulated normal contributions to the date of the member's death;

(2) an amount equal to one-twelfth (1/12) of the compensation received by the member during the last twelve (12) months

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of such compensation multiplied by the smaller of six (6) or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the workmen's compensation division of the state of Montana that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment.

Section 44. There is a new section to be numbered 68-2303, R.C.M. 1947, which reads as follows:

68-2303. A member or his beneficiary after his death may elect to have the death benefit paid in an actuarially equivalent form subject to such rules and regulations as the board may adopt. Election of an optional death benefit shall be by written application.

Section 45. There is a new section to be numbered 68-2304, R.C.M. 1947, which reads as follows:

68-2304. A beneficiary eligible to receive a death benefit may elect a survivorship allowance instead if all of the following conditions are met:

(1) the member on behalf of whom the death benefit is payable was eligible for service retirement or early retirement;

(2) the beneficiary is a natural person of legal age with an insurable interest in the deceased at the time of his death;

(3) the beneficiary elects the survivorship allowance within ninety (90) days of receipt of notice from the board that he is eligible to receive the death benefit. Election shall be by written application.

Section 46. There is a new section to be numbered 68-2305, R.C.M. 1947, which reads as follows:

68-2305. The annual amount of survivorship allowance payable to a member's beneficiary shall be the same as the optional retirement allowance would have been if the member had retired immediately prior to his death after having elected an option 4 retirement allowance with the beneficiary as the contingent annuitant.

Section 47. There is a new section to be numbered 68-2401, R.C.M. 1947, which reads as follows:

68-2401. (1) The beneficiary of a member shall be such person as the member shall so designate in the appropriate written application. A member may revoke such designation and name a dif-

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ferent beneficiary by filing a revised written instrument with the board. If no living beneficiary is designated, the estate of the member shall be the beneficiary. If the estate would not be probated but for the amount due from the retirement system, all of the amount due, including retirement allowances accrued but not received prior to death, shall be paid directly without probate to the surviving next of kin of the deceased, or the guardians of said survivor's estate, share and share alike, payment to be made in the same order in which the following groups are listed:

(a) husband or wife, or

(b) children, or

(c) father and mother, or

(d) grandchildren, or

(e) brothers and sisters, or

(f) nieces and nephews.

(2) No payment shall be made to persons included in any of said groups if at the date of payment there be living persons in any of the groups preceding it, as listed. Payment shall be made upon receipt from said persons of an affidavit, upon a form supplied by the retirement board, that there are no living individuals in the groups preceding it and that the estate of the deceased will not be probated. The payment shall be in full and complete discharge and acquittance of the board and system on account of said death.

(3) If a member's beneficiary cannot be found within ninety (90) days of the member's death or if the estate of the member is his beneficiary, the board in its discretion may pay all or a portion of the death benefit to the undertaker who conducted the funeral of the member or to any person or organization who paid the undertaker; provided, however, the amount so paid by the board shall not exceed the funeral expenses or the portion of such expenses paid by the person or organization respectively, all as evidenced by the sworn itemized statement of the undertaker and by other documents the board may require. The payment shall be in full and complete discharge and acquittance of the board and system up to the amount so paid, anything in this act to the contrary notwithstanding.

Section 48. There is a new section to be numbered 68-2402, R.C.M. 1947, which reads as follows:

68-2402. If any benefit from the system not to exceed five hundred dollars ($500) is payable to a minor who has no guardian

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of his estate, the benefit may be paid to the person entitled to the custody of a minor to hold for the minor upon execution and filing with the board of a written statement by such person that the total estate of the minor does not exceed one thousand dollars ($1,000) in value. The payment shall be in full and complete discharge and acquittance of the board and system on account of said benefit. The person shall account to the minor for the money when the minor reaches the age of majority.

Section 49. There is a new section to be numbered 68-2501, R.C.M. 1947, which reads as follows:

68-2501. A retirement allowance or survivorship allowance granted under the provisions of this act shall be payable in monthly installments, except that the board at its discretion may convert payments of less than twenty dollars ($20) per month to larger periodic payments which are the actuarial equivalent of such smaller payments, but which occur less frequently. If payments of at least twenty dollars ($20) per year are not so payable, the payment may be commuted into a single sum. A smaller pro rata amount may be paid for part of a month when the retirement allowance begins after the first day of the month or ends before the last day of the month.

Section 50. There is a new section to be numbered 68-2502, R.C.M. 1947, which reads as follows:

68-2502. The right of a person to a retirement allowance or any other benefit under this act and the moneys in the fund created under this act shall not be subject to execution, garnishment, attachment, state or municipal taxes, or any other process whatsoever, and shall be unassignable except as in this act specifically provided.

Section 51. There is a new section to be numbered 68-2503, R.C.M. 1947, which reads as follows:

68-2503. If it shall be impracticable for the board of administration to determine from the records the length of service, the compensation or the age of any members, or if any member refuses or fails to give the board a statement of his state service, his compensation or his age, the said board may estimate, for the purposes of this act, such length of service, compensation or age.

Section 52. There is a new section to be numbered 68-2504, R.C.M. 1947, which reads as follows:

68-2504. (1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation

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the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates shall be four and six-tenths percent (4.6%) from July 1, 1973, to June 30, 1975, and four and nine-tenths percent (4.9%) from July 1, 1975, and thereafter.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the forty (40) year period following the date of the determination which is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons.

Section 53. There is a new section to be numbered 68-2505, R.C.M. 1947, which reads as follows:

68-2505. (1) No later than the tenth day of each month, each department, board, commission, bureau or other agency of the state shall certify to the state auditor all contributions required of such unit and to its employees under this act on the basis of compensation paid during the previous month, including any contributions payable with respect to members absent in the armed forces of the United States. The state auditor shall thereupon draw a warrant upon the state treasurer for such contributions. The warrant shall be drawn to the credit of the retirement fund on the funds appropriated to that unit.

(2) Every state employer shall include in his budget and request for legislative appropriations an amount necessary to defray the state's part of the costs of this act for employees in their respective departments, and to the end that the legislature may make definite appropriation for the cost incurred by each employer whose employees are within the retirement system created by this act.

Section 54. There is a new section to be numbered 68-2506, R.C.M. 1947, which reads as follows:

68-2506. Any fund out of which payments are made under

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the provisions of this act may be reimbursed to the extent of such payments by transfer of a sufficient sum for such reimbursement from another fund or funds under the control of the same disbursing officer. The disbursing officer shall certify to the state auditor amount or amounts to be thus transferred, the fund or funds from and to which the transfer is to be made, and the auditor shall thereupon make the transfer as directed in the certificate.

Section 55. There is a new section to be numbered 68-2507, R.C.M. 1947, which reads as follows:

68-2507. Between the first and twentieth day of each month, each contracting employer shall remit to the public employees' retirement system all contributions required of the employer and its employees under this act on the basis of compensation paid during the previous month. These remittances shall be accompanied by such reports as are required by rules of the board.

Section 56. There is a new section to be numbered 68-2508, R.C.M. 1947, which reads as follows:

68-2508. This act shall be valid and effective despite any provisions in the state budget act to the contrary.

Section 57. There is a new section to be numbered 68-2509, R.C.M. 1947, which reads as follows:

68-2509. If more or less than the correct amount of contribution required by this act of a member, the state or a contracting employer is or has been paid, proper adjustment shall be made in connection with the subsequent payments, or such adjustments may be made by direct cash payments between the member, state or contracting employer in connection with whom the error was made, and the board. Adjustments to correct any other errors in payments to or by the board of administration may be made in the same manner.

Section 58. There is a new section to be numbered 68-2510, R.C.M. 1947, which reads as follows:

68-2510. (1) A person whose compensation is paid either fully or in part from federal funds, but who is not subject to the federal retirement system, is considered an employee and is entitled to all benefits and is required to make all employee contributions under the retirement system based upon the full salary received by such employee, including that portion of salary paid from federal funds.

(2) Each member of the Montana army and air national

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guard is considered an employee. Any such person who was an employee on July 1, 1961, or prior thereto and who has filed with the board an election not to become a member may at anytime, while he is an employee, file with the board an election to become a member and receive credit for prior service under the provisions of section 68-1608.

Section 59. There is a new section to be numbered 68-2511, R.C.M. 1947, which reads as follows:

68-2511. (1) For the purpose of this section, "system" means the public employees' retirement system of Montana or the teachers' retirement system of the state of Montana.

(2) Upon transfer of a person from being an employee under one system to being an employee in the other, there shall be transferred service credits, both prior and membership, as have not been forfeited by withdrawal, unless the forfeited credits shall have been reinstated as provided by law. The amounts transferred shall be determined by the boards of the systems by mutual agreement and be certified by the system from which the employee transfers. Any person who is concurrently employed by employers under both systems shall be entitled to establish credits or equities in each of the systems in accordance with and to the extent set forth in this act.

(3) Eligibility of any such person for a retirement allowance, death benefit or refund of contributions shall be governed by the provisions of the act creating the system to which the person last made contributions based upon the entire length of service for which he shall have been granted credit under both systems.

Section 60. There is a new section to be numbered 68-2512, R.C.M. 1947, which reads as follows:

68-2512. The chief administrative officer of each employer shall furnish monthly reports to the board of administration showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal or death. The chief administrative officer shall furnish such additional information concerning the members as the board may require in the administration of the retirement system, including such services of the employer's office and departments as the board may request in connection with claims by members for benefits under the system.

Section 61. There is a new section to be numbered 68-2513, R.C.M. 1947, which reads as follows:

68-2513. (1) "Index" for purposes of this section shall mean,

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for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959=100) compiled by the bureau of labor statistics, United States department of labor, or successor agency.

(2) Effective July 1, 1973, every service or disability retirement allowance then payable to a retired member or to his beneficiary shall be increased by a percentage equal to the lesser of one-half (½) of the percentage increase in the index for 1972 from the index for 1970 or the index for 1972 from the index for the calendar year preceding the effective date of retirement of the member.

(3) Effective July 1, 1973, every survivorship annuity then payable to a member's beneficiary shall be increased by a percentage equal to the lesser of one-half (½) of the percentage increase in the index for 1972 from the index for the calendar year 1970 or for the index for 1972 from the index for the calendar year preceding the date of death of the deceased member.

Section 62. There is a new section to be numbered 68-2514, R.C.M. 1947, which reads as follows:

68-2514. All benefits conferred upon members of the public employees' retirement system prior to the effective date of this act shall be retained for all person who are members of the system on the effective date of this act.

Section 63. Sections 68-101, 68-102, 68-201, 68-202, 68-203, 68-301, 68-302, 68-303, 68-401 through 68-405, 68-501, 68-601, 68-602, 68-603, 68-701 through 68-710, 68-801, 68-802, 68-901, 68-902, 68-1001 through 68-1005, 68-1101, 68-1201 and 68-1301 through 68-1320, R.C.M. 1947, are repealed.

Approved: March 15, 1973.

CHAPTER NO. 324

An Act Providing for Notification of Nontenure Teachers Regarding Their Election or Termination for the Following Year.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The trustees shall provide written notice to all nontenure teachers who have been reelected by the first day of April. Any nontenure teacher who does not receive notice of reelection or termination shall be automatically reelected for the ensuing school fiscal year. Any nontenure teacher who receives notification of his reelection for the ensuing school fiscal year

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shall provide the trustees with his written acceptance of the conditions of such reelection within twenty (20) days after the receipt of the notice of reelection. Failure to so notify the trustees within twenty (20) days may be considered nonacceptance of the tendered position. The provisions of this section shall not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

Approved: March 15, 1973.

CHAPTER NO. 325

An Act Creating "The Montana Strip Mining and Reclamation Act" and Providing for the Control of Prospecting For and the Strip Mining of Coal, Clay, Phospate Rock, and Uranium; Providing for Permits, Reclamation Plan Requirements, Methods of Operation, and Penalties; Providing for the Termination of Reclamation Contracts Entered into Under Chapter 245, Laws of Montana, 1967; Repealing Sections 50-1018 through 50-1033, R.C.M. 1947; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act shall be known and may be cited as "The Montana Strip Mining and Reclamation Act."

Section 2. It being the declared policy of this state and its people

—to maintain and improve the state's clean and healthful environment for present and future generations,

—to protect its environmental life-support system from degradation,

—to prevent unreasonable degradation of its natural resources,

—to restore, enhance, and preserve its scenic, historic, archeologic, scientific, cultural, and recreational sites,

—to demand effective reclamation of all lands disturbed by the taking of natural resources, and

—to require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives,

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the legislature hereby finds and declares:

(1) That, in order to achieve the aforementioned policy objectives, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and assure a long-range dependable tax base, it is reasonably necessary to require, after the effective date of this act, that all strip mining operations be limited to those for which annual permits are granted, that no permit be issued until the operator presents a comprehensive plan for surface reclamation and restoration, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, and that certain lands because of their unique or unusual characteristics may not be strip mined under any circumstances, all as more particularly appears in the remaining provisions of this act.

(2) That this act be deemed to be an exercise of the authority granted in the Montana constitution, as adopted June 6, 1972, and in particular, a response to the mandate expressed in article IX thereof, and also be deemed to be an exercise of the general police power to provide for the health and welfare of the people.

Section 3. Unless the context requires otherwise in this act:

(1) "mineral" means coal, clay, phosphate rock, and uranium;

(2) "overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of strip mining;

(3) "strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral;

(4) "prospecting" means the removal of overburden, core drilling, construction of roads or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;

(5) "area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all

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lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(6) "operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from a designated strip mine area, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit;

(7) "operator" means a person engaged in strip mining who removes or intends to remove more than ten thousand (10,000) cubic yards of mineral or overburden;

(8) "person" means a person, partnership, corporation, association, or other legal entity, or any political subdivision, or agency of the state;

(9) "method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the mineral that affect the reclamation of the area of land affected;

(10) "topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth;

(11) "department" means the department of state lands provided for in title 82A, chapter 11;

(12) "commissioner" means the commissioner of state lands provided for in section 82A-1104;

(13) "board" means the board of land commissioners provided for in article X, section 4 of the constitution of this state;

(14) "reclamation" means backfilling, grading, highwall reduction, topsoiling, planting, revegtation, and other work to restore an area of land affected by strip mining under a plan approved by the department;

(15) "degree" means from the horizontal, and in each case is subject to a tolerance of five per cent (5%) error;

(16) "contour strip mining" means that strip mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the

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slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench;

(17) "bench" means the ledge, shelf, table, or terraces formed in the contour method of strip mining;

(18) "fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or down slope from the cut section as formed in the contuor method of strip mining;

(19) "abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not contiinue or resume.

Section 4. The board:

(1) shall issue after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this act and rules adopted under this act;

(2) shall issue after an opportunity for a hearing, a final order directing the department to revoke a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) shall adopt after an opportunity for a hearing, general rules pertaining to strip mining to accomplish the purposes of this act;

(4) shall conduct hearings under provisions of this act or rules adopted by the board.

Section 5. The department:

(1) shall exercise general supervision, administration, and enforcement of this act and all rules and orders adopted under this act;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, backfilling, grading, highwayy reduction, topsoiling and for the reclamation of the area of land affected by his operation;

(3) shall order the suspension of any permit for failure to comply with this act or any rule adopted under this act;

(4) shall order the halting of any operation that is started without first having secured a permit as required by this act;

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(5) shall make investigations and inspections necessary to insure compliance with this act;

(6) may encourage and conduct investigations, research, experiments and demonstrations, and collect and disseminate information relating to strip mining and reclamation of lands and waters affected by strip mining;

(7) may adopt rules with respect to the filing of reports, the issuance of permits and other matters of procedure and administration.

Section 6. (1) An operator may not engage in strip mining without having first obtained from the department a permit designating the area of land affected by the operation. The permit shall authorize the operator to engage in strip mining upon the area of land described in his application and designated in the permit for a period of one (1) year from the date of its issuance. Such permit shall be renewable from year to year thereafter upon application to the department at least thirty (30) but not more than sixty (60) days prior to the renewal date so long as the operator is in compliance with the requirements of this act, the rules hereunder, and the reclamation plan provided for in section 10 of this act, and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of sections 9 and 13 of this act.

(2) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half (.5) mile of any part of the affected area;

(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

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(e) the permanent and temporary post office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this act, and an identification of those permits;

(g) whether the applicant is in compliance with subsection (2) of section 17 and whether every officer, partner, director, or any individual owning of record or beneficially (alone or with associates) if known, ten per cent (10%) or more of any class of stock of the applicant, is subject to any of the provisions of subsection (2) of section 17 and he shall so certify, and whether any of the foregoing parties or persons have ever had a strip mining license or permit issued by any other state or federal agency revoked, or have ever forfeited a strip mining bond or a security deposited in lieu of a bond and if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the british thermal unit (B.T.U.) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two (2) copies each of two (2) sets of geologic cross-section accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at five hundred (500) foot intervals across the surface and shall run at a ninety (90) degree angle to the other set. Each cross-section shall depict the thickness and geological character of all known strata beginning with the top soil;

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant has prominently published an announcement of his application for a strip

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mining permit, and a detailed description of the area of land to be affected should a permit be granted;

(l) such other or further information as the department may require.

(3) The application for a permit shall be accompanied by two (2) copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining and the boundaries of surface properties and names of owners of record of the affected area and within one thousand (1,000) feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within one thousand (1,000) feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the drainage plan on and away from the area of land affected. This plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge;

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the location of test boring holes;

(j) show the surface location lines of any geologic cross-sections which have been submitted;

(k) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs and trees;

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(l) be certified as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the strip mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested;

(m) contain such other or further information as the department may require.

(4) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this act and rules adopted under this act.

(5) An application fee of fifty dollars ($50) shall be paid before the permit required in this section shall be issued. The operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred dollars ($200) nor more than twenty-five hundred dollars ($2,500) for each acre or fraction thereof of the area of land affected, with a minimum bond of two thousand dollars ($2,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading, highwall reduction, topsoiling, and reclamation to be required; but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan.

Section 7. The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time within one (1) year from the date of issuance of the permit, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this act and shall pay an application fee of fifty dollars ($50) and shall file

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with the department a supplemental bond in the amount to be determined under section 6 for each acre or fraction of an acre of the increase approved. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below two thousand dollars ($2,000), except as provided in subsection (5) of section 6.

Section 8. (1) On and after the effective date of this act prospecting by any person on land not included in a valid strip mining permit shall be unlawful without possessing a valid prospecting permit issued by the department as provided in this section. No prospecting permit shall be issued until the operator submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this act.

(2) An application for a prospecting permit shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include among other things, a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface mining map and reclamation plan under this act. The department shall determine, by rules and regulations, the precise nature of such required prospecting map and reclamation plan. Any operator who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and such other information as may be required by the department. The applicant must state what types of prospecting and excavating techniques will be employed on the affected land. The application shall also include any other or further information the department may require.

(3) The application shall be accompanied by a fee of one hundred dollars ($100). This fee shall be used as a credit toward the strip mining permit fee provided by this act if the area covered by the prospecting permit becomes covered by a valid surface mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip mining reclamation and revegetation bonds under this act.

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(5) In the event that the holder of a prospecting permit desires to strip mine the area covered by the prospecting permit, and has fulfilled all the requirements for a strip mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip mining reclamation plan shall be promptly reclaimed.

(6) The prospecting permit shall be valid for one (1) year, and shall be subject to renewal, suspension, and revocation in the same manner as strip mining permits under this act.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports, as are required of strip mining operators under this act.

Section 9. (1) An application for a prospecting or strip mining permit shall not be approved by the department if there is found on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department that the requirements of the act or rules will not be observed or that the proposed method of operation, backfilling, grading, highwall reduction, topsoiling, revegetation, or reclamation of the affected area cannot be carried out consistent with the purpose of this act.

(2) The department shall not approve the application for prospecting or strip mining permit where the area of land described in the application includes land having special, exceptional, critical, or unique characteristics, or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this act, land is defined as having such characteristics if it possesses special, exceptional, critical or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock; or

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future; or

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipi-

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tate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

(3) If the department finds that the overburden on any part of the area of land described in the application for a prospecting or strip mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists.

(4) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting or strip mining permit application before it can be approved.

Section 10. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this act, shall reclaim and revegetate the land affected by his operation. Under the provisions of this act and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, topsoiling and a reclamation plan for the area of land affected by his operation. In developing a method of operation, and plans of backfilling, grading, highwall reduction, topsoiling and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, landslides, water pollution, and hazards dangerous to life and property. The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and sections 11, 12 and 13 of this act. The plan shall be submitted to the department and the department shall notify the applicant by registered mail within one hundred twenty (120) days after receipt of the plan and complete application if it is or is not acceptable. The department may extend the one hundred twenty (120) days an additional one hundred twenty (120) days upon notification of the operator in writing. If the plan is not acceptable, the de-

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partment shall set forth the reasons why the plan is not acceptable and it may propose modifications, delete areas, or reject the entire plan. A land owner, operator, or any person aggrieved by the decision of the department may, by written notice, request a hearing by the board. The board shall notify the person by registered mail within twenty (20) days after the hearing of its decision. Every reclamation plan shall be subject to annual review and modification.

(2) In addition to the method of operation, grading, backfilling, highwall reduction, topsoiling and reclamation requirements of this act and rules adopted under this act, the operator, consistent with the directives of subsection (1) of this section shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) seal off, as directed by rules, any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff water so as to reduce soil ersoion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, surface damage to adjacent lands and water pollution. ensure public safety, and for other purposes.

(3) An operator may not throw, dump, pile or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under section 6, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of the area of land which is under permit and for which a bond has been posted under section 6.

Section 11. (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than twenty (20) degrees from the horizontal. Highwall reduction shall be commenced at or beyond

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the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading, such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addiiton to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this act.

(3) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, and returned as the top layer after the operation has been backfilled and graded; provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil.

(4) As determined by rules of the board, time limits shall be established requiring backfilling, grading, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(5) When the backfilling, grading, and topsoiling have been completed and approved by the department, the commissioner may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than two hundred dollars ($200) per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount.

(6) An operator may propose alternative plans other than backfilling, grading, highwall reduction, or topsoiling if the restoration will be consistent with the purpose of this act. These plans shall be submitted to the department, and, after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the

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plans, the backfilling, grading, highwall reduction, or topsoiling requirements of this act may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of section 6 (2) (k).

Section 12. After the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant such legumes, grasses, shrubs, and trees upon the area of land affected as are necessary to provide a suitable permanent diverse vegetative cover capable of:

(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and

(c) preventing soil erosion to the extent achieved prior to the operation.

The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover shall be defined by rules of the board.

Section 13. The operator shall commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of strip mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, topsoiling, and water management practices that are approved in the plans shall be kept current with the operation as defined by rules of the board and a permit or supplement to a permit may not be issued, if in the discretion of the department, these practices are not current.

Section 14. (1) At least sixty (60) days prior to the date of each permit expiration, the operator shall file a planting report with the department on a form to be prescribed and furnished by the department, giving the following information:

(a) identification of the operation;

(b) the type of planting or seeding, including mixtures and amounts;

(c) the date of planting or seeding;

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(d) the area of land planted;

(e) any other relevant information the department requires.

(2) All planting reports shall be certified by the operator.

(3) Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for a hearing; but in no event shall such remaining bond be released prior to a period of five (5) years from the initial planting provided for in section 12 of this act.

Section 15. All legumes, grasses, shrubs, and trees which are planted or seeded on the area of land affected as required by this act or rules adopted under this act, become the property of the landowner, after complete release of the bond, unless the operator and the landowner agree otherwise.

Section 16. Within sixty (60) days after each date of expiration of a permit, the operator shall annually file with the department a report stating the exact number of acres of land affected by the operation, the extent of the reclamation already accomplished by him, and any other information required by the rules of the department and the board. The report shall be accompanied by a copy of the map filed with the original application which shall show any revisions made necessary by results of the operation.

Section 17. (1) If any of the requirements of this act or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this act, the department shall serve a notice of noncompliance on the operator, or where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this act or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

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(2) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this act in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator has paid into the reclamation account a sum together with the value of the bond, the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this act.

Section 18. Where one operator succeeds another at an uncompleted operation, either by sale, assignment, lease, or otherwise, the department may release the first operator from all liability under this act as to that particular operation if both operators have been issued a permit and have otherwise complied with the requirements of this act, and the successor operator assumes as part of his obligation under this act, all liability for the reclamation of the area of land affected by the former operator.

Section 19. (1) All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this act shall be placed in the state treasury and credited to a special agency account to be designated as the strip mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this act and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action.

Section 20. (1) The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by strip mining. The board may have reclamation work done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining that have not been reclaimed and rehabilitated in accordance with the standards of this act.

Section 21. The board may reclaim, in keeping with the

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provisions of this act, any affected lands with respect to which a bond has been forfeited and to use moneys appropriated from the strip mining and reclamation fund for such purposes.

Section 22. A resident of this state, with konwledge that a requirement of this act or rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel, may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining on the dominant tract.

(5) This section does not create, modify, or affect any right, liability, or remedy other than as expressly provided in this section.

Section 23. (1) A person or operator who violates any of the provisions of this act or rules or orders adopted under this act shall pay a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for the viola-

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tion, and an additional civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each day during which a violation continues, and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided in this section for, and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this act.

(3) A person who willfully violates any of the provisions of this act, or any determination or order adopted under this act which has become final is guilty of a misdemeanor and shall be fined not less than five hundred dollars ($500) and not more than five thousand dollars ($5,000). Each day on which a violation occurs constitutes a separate offense.

Section 24. All hearings and appeal procedures shall be in accordance with sections 82-4209 through 82-4217.

Section 25. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 26. Sections 50-1018 through 50-1033, R.C.M. 1947, are repealed.

Section 27. Every operator shall within ninety (90) days after the effective date of this act file with the department an application for a permit.

Section 28. Ninety (90) days after the effective date of this act, the state shall proceed to cancel, according to their terms, all existing contracts entered into pursuant to chapter 245, laws of Montana, 1967. If the contract does not provide according to its terms, for the cancellation, it shall be terminated and void within two hundred seventy (270) days from the effective date of this act.

Section 29. This act is effective on its passage and approval.

Approved: March 16, 1973.

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CHAPTER NO. 326

An Act to Provide for Reclamation and Conservation of Land Subject to Open Cut Bentonite, Sand or Gravel Mining; Requiring Reclamation Contracts for Operations Resulting in Removal of Ten Thousand (10,000) Cubic Yards of Overburden or Product; Providing Enforcement by the State Board of Land Commissioners; Repealing Sections 50-1018 through 50-1033, R.C.M. 1947, and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act shall be known and may be cited as "The Open Cut Mining Act."

Section 2. It is the policy of this state to provide for the reclamation and conservation of land subjected to open cut bentonite, sand or gravel mining. Therefore, it is the purpose of this act to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home and industrial sites subjected to or which may be affected by open cut bentonite, sand or gravel mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic or other unique areas, and to promote the health, safety and general welfare of the people of this state.

Section 3. The state board of land commissioners is hereby authorized to enter into contracts in the name of the state of Montana with operators which will provide for the reclamation of lands on which open cut mining of bentonite, sand and gravel has been or is to be conducted. The state board of land commissioners is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and said board shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts.

Section 4. When used in this act, unless a different meaning clearly appears from the context:

(1) "Contract'' means a mined land reclamation contract prepared by the commission to meet the requirements of this act.

(2) "Open cut mining" means the mining of bentonite, sand or gravel by removing the overburden lying upon natural deposits thereof, and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality or quantity of any natural deposit of bentonite, sand or gravel.

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(3) "Reclamation" means the reconditioning of the area of land affected by open cut mining operations to make the area suitable for productive use including but not limited to, forestry, agriculture, grazing, wildlife, recreation, residential and industrial sites.

(4) "Overburden" means all of the earth and other materials which lie above a natural deposit of bentonite, sand or gravel. "Spoil" is the overburden disturbed from its natural state in the process of open cut mining.

(5) "Operator" means any person engaged in and controlling an open cut mining operation.

(6) "Affected land" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(7) "Commission" means the state board of land commissioners.

(8) "Person" means any natural person, or any firm, association, partnership, cooperative, corporation or any department, agency or instrumentality of the state or any governmental subdivision, or any other entity whatsoever.

(9) "Landowner" means the owner of land directly or indirectly affected by an open cut mining operation.

(10) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. Such notice shall be given once a week for three (3) successive weeks.

(11) "Soils materials" are those horizons containing topsoil or other soils leached free of deleterious salts and capable of sustaining plant growth and recognized as such by standard authorities.

(12) "Refuse" means all waste material directly connected with the open cut mining operations.

(13) "Final cut" means the last pit created in an open cut mined area.

(14) "High wall" means that side of the pit adjacent to unmined land.

(15) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, intended mine areas and description of proposed reclamation of the land with appropriate maps.

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(16) "Progress report" means a report showing the land which the operator has affected by open cut mining during the year. Such report shall show the number of acres of affected land and all reclamation accomplished.

Section 5. The commission is the administrator of this act and it has all the power necessary to implement and enforce it. The commission may delegate to the commissioner of state lands such powers, duties and functions under this act as it deems necessary for the performance of its duties.

Section 6. The commission has the following powers, duties and functions:

(1) to enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by the commission that the requirements of the act or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistent with the purpose of the act;

(2) to prepare and adopt rules and regulations pertaining to open cut mining to accomplish the purposes of this act;

(3) to conduct hearings and for the purposes of conducting such hearings, to administer oaths and affirmations, to subpoena witnesses, to compel attendance of witnesses, to hear evidence and to require the production of any books, papers, correspondence, memoranda, agreements, documents or other records relevant or material to the inquiry;

(4) to adopt uniform procedures for the filing of necessary records, the issuance of contracts, and for any other matters of administration not specifically enumerated in this act;

(5) to reclaim any affected land with respect to which a bond has been forfeited;

(6) to make investigations or inspections which may be deemed necessary to insure compliance with any provisions of this act.

Section 7. From and after the effective date of this act, no operator shall conduct open cut mining operations which shall result in the removal of ten thousand (10,000) cubic yards, or more, of product or overburden, until he has entered into a contract with the commission for the reclamation of the land affected. Any operator conducting a number of operations each of which result in the removal of less than ten thousand (10,000) cubic yards of product or overburden but which result in the removal of ten thousand (10,000) cubic yards, or more, of pro-

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duct or overburden in the aggregate shall be subject to the provisions of this act.

Section 8. Applications for a contract shall be made upon a form furnished by the commission, which form contains the following:

(1) the name of the operator and, if other than the owner of the land, the name and address of the owner.

(2) the type of operation to be conducted;

(3) the volume of earth to be removed, as accurately as the same may then be estimated, and the volume which has been previously removed, if any;

(4) the location of the operation by legal subdivision, section, township and range, and county;

(5) the date when such operation was or will be commenced;

(6) the operator must submit a plan of his operation and the method and manner of reclamation that will be used or followed. If the operator, prior to applying for a contract, notifies the commission of his intention to submit a plan, and requests the commission to examine the area to be mined, the commission shall cause the area to be examined and make recommendations to the operator regarding reclamation;

(7) a statement that the applicant has the right and power by legal estate owned to mine by open cut mining the lands so described;

(8) the application shall be accompanied by:

(a) a bond or security meeting the requirements as set out in this act, and

(b) a fee of fifty dollars ($50);

Upon receipt of such application, bond or security and fee due from the operator, and upon agreement to the terms of the contract by the parties, the commission may issue a contract to the applicant which shall entitle him thereafter to continue in or engage in open cut mining on land therein described;

(9) an operator desiring to have his contract amended to cover additional contiguous or nearby land may file an amended application with the commission. Upon receipt of the amended application, and such additional bond as may be required, and upon agreement to the terms of the amendment by the parties, the commission may issue an amendment to the original contract

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covering the additional land described in the amended application, without the payment of any additional fee;

(10) an operator may withdraw any land covered by contract, except affected land, by notifying the commission thereof, in which case the penalty of the bond or security filed by such operator pursuant to the provisions of this act shall be reduced proportionately.

Section 9. (1) Any bond required to be filed in this act by the operator shall be in such form as the commission prescribed, payable to the state of Montana, and conditioned upon the operator's full compliance with all requirements of this act and all rules and regulations of the commission. Such bond shall be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety, licensed to do business in the state of Montana, as surety. The penalty of such bond shall be in an amount not to exceed the costs of restoration required by this act as determined by the commission, but shall not be less than two hundred dollars ($200) nor more than one thousand dollars ($1,000) per acre.

(2) In lieu of such bond, the operator may deposit cash and government securities or a bond with property sureties with the commission in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the commission, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety shall be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this act. Such bond or security shall be and remain in effect until the mined acreages have been reclaimed, as provided under the contract, and approved and released by the commission, and shall from time to time cover only actual mined acreages and may be increased or reduced to cover only such acreages as remained unreclaimed.

(3) If the license to do business in the state of any surety upon a bond filed with the commission pursuant to this act shall be suspended or revoked, the operator, within thirty (30) days after receiving notice thereof from the commission, shall substitute for such surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the commission shall have the right to suspend the contract of the operator to conduct operations upon the land described in such contract until such substitution has been made.

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(4) The commission shall cause to be reclaimed any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator shall have completed all of the requirements under the provisions of this act as to any affected land, he shall notify the commission thereof. If the commission shall release the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately.

Section 10. The contract shall meet the following requirements:

(1) The operator shall submit a reclamation plan to the commission before commencing any open cut mining, and may not commence mining before it receives approval from the commission. The operator may request and receive a meeting with the commission prior to submission of the plan. If the commission does not notify the operator that it has approved or disapproved a plan within thirty (30) days after the commission has received the plan, the commission shall be deemed to have approved the plan. The commission, however, may for sufficient cause extend its period of consideration for an additional thirty (30) days if it notifies the operator prior to the end of the original thirty (30) day period. The commission shall submit all reclamation plans or amendments to the reclamation plan to the landowner for his recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The commission may seek technical help from any state or federal agency. The commission must submit the plan immediately to the director, university of Montana statewide archeological survey for evaluation of possible archeological or historical values in the area to be mined. The commission may approve a reclamation plan only if the commission has found that the plan provides for the best possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed the affected land shall be reclaimed to a productive use. Once the reclamation plan has been accepted in writing by the commission, it shall become a part of the contract but shall be subject to annual review and modification by the commission.

(2) The commission may not approve any reclamation plan unless the plan provides that:

(a) the land will be reclaimed for one or more specified uses, including but not limited to: forestry, pasture, orchard, cropland, residence, recreation, industry, habitat (including food, cover or water) for wildlife or other uses;

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(b) to the extent reasonable and practicable, the operator shall establish vegetative cover commensurate with the proposed land use;

(c) where operations result in a need to prevent acid drainage or sedimentation, on or in adjoining lands or streams, there shall be provisions for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or devices will not interfere with other landowners rights or contribute to water pollution;

(d) to accomplish practical utilization of soil materials, such material will be utilized for placement on affected areas if required by the reclamation plan after completion or termination of that particular phase of the mining operations at a depth sufficient for plant growth on slopes of 3:1 or less. Grading specifications shall be commensurate with the topography sought and land use designated;

(e) metal and other waste shall be removed or buried;

(f) all access, haul and other support roads shall be located, constructed and maintained in such a manner as to control and minimize channeling and other erosion;

(g) the operator shall submit annually to the commission a progress report;

(h) all operations shall be conducted so as to avoid range and forest fires and spontaneous combustion. Open burning of carbonaceous materials shall be in accordance with suitable practices for fire prevention and control;

(i) archeological and historical values in areas to be mined shall be given appropriate protection;

(j) except for rock faces, bench faces and excavations used for water impoundments, each surface area of the mined premises which will be disturbed shall be revegetated when its use for extractive purposes is no longer required. Seeding and planting shall be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock and retardation of erosion. All seed will be drilled unless otherwise provided in the plan;

(k) reclamation shall be as concurrent with mining operations as feasible, and must be completed within a specified length of time.

(3) If reclamation according to the plan has not been completed in the time specified, the commission shall after thirty (30) days written notice order the operator to cease mining, and.

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if the operator does not cease, shall institute an action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

(4) (a) At any time during the period of reclamation the operator may for good reason submit to the commission a new reclamation plan or amendment to the existing plan including extensions of time.

(b) The commission may approve the proposed new reclamation plan, or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan, and

(ii) the proposed new plan, or amendments to the existing plan, will result in reclamation as desirable or more so than the reclamation proposed under the existing plan, or

(iii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended. When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan becomes a part of the contract.

(5) The operator shall provide a performance bond, or an alternative acceptable to the commission, in an amount commensurate with the estimated cost of reclamation, but in no case shall the bond be less than two hundred dollars ($200) per acre. The estimated cost of reclamation shall be set forth in the reclamation plan.

(6) The contract, reclamation plan and amendments accepted by the commission shall be a public record and open to inspection.

(7) The contract shall become effective when signed by the commission and the operator, and shall remain in force until terminated by mutual consent or by the commission upon six (6) months notice.

Section 11. The commission may receive any federal funds, state funds or any other funds for the reclamation of land affected by open cut mining. The commission may cause the reclamation work to be done by its own employees or by employees of other governmental agencies, soil conservation districts or through contracts with qualified persons.

Any funds or any public works programs available to the commission shall be used and expended to reclaim and rehabilitate any lands that have been subject to open cut mining that have not been reclaimed and rehabilitated in accordance with the standards of this act.

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Section 12. The commission, or its accredited representatives, may enter upon lands subjected to open cut mining at all reasonable times for the purpose of inspection, to determine whether the provisions of this act have been complied with.

Section 13. Anyone required by this act to have a contract and who engages in open cut mining without previously securing a contract to do so as prescribed by this act is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000). Each day of operation without a contract required by this act shall be deemed a separate violation.

Section 14. The commission shall have the power to reclaim, in keeping with the provisions of this act, any affected lands with respect to which a bond has been forfeited.

Section 15. (1) A person who is aggrieved by a final decision of the commissioner of state lands is entitled to a hearing before the commission.

(2) The Montana Administrative Procedure Act (title 82, chapter 42, R.C.M. 1947) governs hearings before the commission and judicial review of decisions of the commission under this act.

Section 16. The provisions of this act are severable, and if any part or provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts of provisions of this act that are severable from the invalid applications.

Section 17. Sections 50-1018 through 50-1033, R.C.M. 1947, are repealed. However, contracts entered into under the provisions of sections 50-1018 through 50-1033, R.C.M. 1947, are not affected hereby, and shall remain in effect until terminated or completed.

Section 18. Nothing in this act shall be construed to be applicable to mining or exploration operations which are regulated under the provisions of Title 50, Chapter 12, R.C.M. 1947.

Section 19. This act is effective on its passage and approval.

Approved: March 16, 1973.

CHAPTER NO. 327

An Act to Vest in the Department and Board of Natural Resources and Conservation the Authority to Require and Review Long-

Range Planning By Certain Utilities, to Give Approval to Energy Generation and Conversion Plant Sites and Associated Facilities, to Require Preconstruction Certification of Such Facilities; Providing Penalties For Violation of This Act; and Providing An Effective Date."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act may be cited as the Montana Utility Siting Act of 1973.

Section 2. It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations; to protect the environmental life support system from degradation and prevent unreasonable depletion and degradation of natural resources; and to provide for administration and enforcement to attain these objectives.

The legislature finds that the construction of additional power and energy conversion facilities may be necessary to meet the increasing need for electricity and other energy, and that such facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that no power or energy conversion facility shall hereafter be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this act.

Section 3. The following words, when used in this act, shall have the following meanings unless otherwise clearly apparent from the context:

(1) the word "department" means the department of natural resources and conservation.

(2) the word "board" means the board of natural resources and conservation.

(3) the words "utility facility" or "facility" mean:

(a) any energy generating and conversion plant and associated facilities

(i) designed for, or capable of, generating at fifty (50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(ii) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(iii) designed for, or capable of, producing fifty thousand ($50,000) barrels of liquid hydro-carbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(iv) designed for or capable of enriching uranium minerals;

(b) an electric transmission line and associated facilities of a design capacity of thirty-four and one-half (34.5) kilovolts or more, except that the following transmission lines and associated facilities shall be subject to certain exceptions under the act:

(i) a transmission line and associated facilities with a design capacity of sixty-nine (69) kilovolts or less and which will be constructed above ground for a distance of ten (10) miles or less shall not be considered a utility facility within the definitions of this act,

(ii) a transmission line and associated facilities with a design capacity of one hundred sixty-one (161) kilovolts or less and which will be constructed underground for a distance of five (5) miles or less shall not be considered a utility facility within the definitions of this act,

(iii) a transmission line or associated facilities of a design capacity of one hundred sixty-one (161) kilovolts or less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) and section 7, subsection (1) of this act if the proposed length of the transmission line will not exceed thirty (30) miles,

(iv) unless specifically covered by subsection (i), (ii) or (iii) of this subsection, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section 6, subsection (1), and the six hundred (600) day requirement of section 7, subsection (1),

(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (i) and (ii);

(c) a gas or liquid transmission line and associated facilities designed for, or capable of, transporting gas or liquid hydro-carbon

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products from a gasification or liquefaction facility of the size indicated in subsections (a)(ii) and (a)(iii) of this section.

(4) the words "associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams and any other device or equipment associated with the production, or delivery of the energy form produced by a facility.

(5) the words "commence to construct" mean any clearing of land, excavation, construction, or other action that would effect the environment of the site or route of a utility facility, but do not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

(6) the word "municipality" means any county or municipality within this state.

(7) the word "person" includes any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization.

(8) the words "public utility" or "utility" mean any person engaged in any aspect of the production, storage, sale, delivery or furnishing of heat, electricity, gas, or energy in any form for ultimate public use.

(9) "certificate" means the certificate of environmental compatibility and public need issued by the board and required for the construction or operation of any facility.

Section 4. (1) No person shall commence to construct a utility facility in the state without first having obtained a certificate issued with respect to such facility by the board. Any facility, with respect to which a certificate is required, shall thereafter be constructed, operated and maintained in conformity with such certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this act.

(2) A certificate may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions and modifications contained therein.

(3) This act shall not apply to any utility facility over which an agency of the federal government has exclusive jurisdiction.

Section 5. Every "producer" as defined in chapter 16 of title 84, the electrical energy producers' license tax, shall, in addition to the sum required to be paid by that act, pay an additional twenty-five hundredths percent (0.25%) of the gross amount as

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shown on the statement which is required by that act, in the same manner and within the time provided by that act. The state board of equalization shall report to the state treasurer separately the amount transmitted to the state treasurer which is added to the electrical energy producers' license tax by this section of this act.

The legislature shall appropriate sufficient funds to finance the department's activities in carrying out its duties under this act. The legislature shall provide a tax on gasification, liquefaction and uranium enrichment facilities sufficient to produce an amount of revenue equal to that derived from electrical energy producers under this section.

Section 6. (1) At least two (2) years prior to anticipated commencement of construction of a utility facility as defined in sections 3(3)(a), 3(3)(b)(iv), and 3(c) and at least nine 9(9) months prior to the anticipated commencement date of the construction of a utility facility as defined in section 3(3)(b)(iii), an applicant for a certificate shall file with the department an application, in such form as the department may prescribe, containing the following information:

(a) a description of the location and of the utility facility to be built thereon;

(b) a summary of any studies which have been made of the environmental impact of the facility;

(c) a statement explaining the need for the facility;

(d) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(e) such other information as the applicant may consider relevant or as the department may by regulation or order require. A copy or copies of the studies referred to in clause (b) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) A filing fee shall be deposited in the state general fund. Said fee shall be based upon the estimated cost of the facility according to the declining scale which follows. The applicant shall pay the accumulated sums calculated as follows: three percent (3%) of any estimated cost up to one million dollars ($1,000,000); plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars ($20,000,000);

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plus one-half of one percent (0.5%) of any estimated cost over twenty million dollars ($20,000,000) and up to one hundred million dollars ($100,000,000); plus one-quarter of one percent (0.25%) of any amount of estimated cost over one hundred million ($100,000,000) and up to three hundred million dollars ($300,000,000); plus one-tenth of one percent (0.1%) of any amount of estimated cost over three hundred million dollars ($300,000,000). It is the intent of the legislature that the revenues derived from the filing fee be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its other responsibilities under this act.

(3) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed. The copy of such application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) Each application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in such newspapers as will serve substantially to inform such persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the department may deem appropriate.

(6) An application for an amendment of a certificate shall be in such form and contain such information as the department shall prescribe. Notice of such an application shall be given as set forth in subsections (3) and (4) of this section.

(7) The board may waive compliance with the time limit of this section if an applicant makes a clear and convincing showing that an immediate need for a facility exists and that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in subsection (1) of this section.

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Section 7. (1) Upon receipt of an application complying with section 6, the department shall commence an intensive study and evaluation of the proposed facility and its effects, pursuant to section 16 of this act. Within six hundred (600) days following receipt of the application for a facility as defined in sections 3(3)(a), 3(3)(b)(iv) and 3(c) and within one hundred eighty (180) days for a facility as defined in sections 3(3)(b)(iii) the department shall make a report to the board, which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation pursuant to section 16 of this act and the final environmental impact statement.

The departments of health and environmental sciences, highways, intergovernmental relations, fish and game, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. Such information may include opinions as to the advisability of granting or denying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

(2) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.

(3) Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a hearing date not more than sixty (60) days after such receipt.

Section 8. (1) The parties to a certification proceeding include:

(a) the applicant;

(b) each municipality and government agency entitled to receive service of a copy of the application under subsection (3) of section 6 of this act; and

(c) any person residing in a municipality entitled to receive service of a copy of the application under subsection (4) of section 6 of this act; any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve

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historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located; or any other interested person; and

(d) the department.

(2) Any party identified in subparagraphs (b) and (c) of subsection (1) of this section waives his right to be a party if he does not participate orally at the hearing.

Section 9. Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon, shall be made a part of the record; a record shall be made of the hearing and of all testimony taken; and the contested case procedures of the Montana Administrative Procedure Act shall apply to the hearing, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant or irrelevant testimony.

Section 10. (1) The board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation or maintenance of the utility facility as the board may deem appropriate. The board may not grant a certificate either as proposed or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in section 16 of this act.

(e) in the case of an electric, gas or liquid transmission line or aqueduct, what part, if any, of the line or aqueduct shall be located underground; that such facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and that such facilities will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued there-

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under, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience and necessity; and

(h) that duly authorized state air and water quality agencies have certified that the proposed facility will not violate state and federally established standards and implementation plans; the judgments of duly authorized air and water quality agencies are conclusive on all questions related to the satisfaction of state and federal air and water quality standards.

(2) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the municipalities, and persons residing therein, affected by the modification, shall have been given reasonable notice of the modification.

(3) A copy of the decision and any opinion issued with the decision shall be served upon each party.

Section 11. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken. If the board has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to paragraph (f) of subsection (1) of section 10 of this act, it shall state in its opinion the reasons therefor.

(2) Any certificate issued by the board shall include the following:

(a) An environmental evaluation statement related to the facilities being certified. The statement shall include, but not be limited to, analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facilities; and

(v) a plan for monitoring environmental effects of the proposed facility.

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(b) A statement signed by the applicant showing agreement to comply with the requirements of this act and the conditions of the certificate.

(3) The time requirement of section 6 and any of the provisions described in sections 7 through 11 of this act may be waived by the board, for good cause shown with respect to applications filed before January 1, 1975. Applications for certificates under this subsection (3) must be promptly filed. A certificate is not required under this act for facilities under construction or in operation on January 1, 1973. However, a certificate must be obtained for associated facilities upon which construction has not commenced before January 1, 1973, subject to the waiver provisions of this subsection.

Section 12. (1) Any party as defined in section 8 of this act aggrieved by the final decision of the board on an application for a certificate, may obtain judicial review by the filing of a petition in a state district court of competent jurisdiction within thirty (30) days after the issuance of such final decision. Upon receipt of such petition, the department shall deliver to the court a copy of the written transcript of the record of the proceeding before it and a copy of the board's decision and opinion entered therein which shall constitute the record on judicial review. A copy of such transcript, decision and opinion shall remain on file with the department and shall be available for public inspection.

(2) If a decision is issued after a hearing on an application for a certificate, such decision is final for purposes of judicial review. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act.

Section 13. Except as expressly set forth in sections 12, 17 and 21 of this act, no court of this state shall have jurisdiction to hear or determine any issue, case or controversy concerning any matter which was or could have been determined in a proceeding before the board under this act or to stop or delay the construction, operation or maintenance of a utility facility except to enforce compliance with this act or the provisions of a certificate issued hereunder pursuant to sections 19 or 21 of this act.

Section 14. (1) Each utility shall furnish annually to the department for its review, a long-range plan for the construction and operation of utility facilities. Such plan shall be submitted on April 1 of each year. The plan shall include the following:

(a) the general location, size and type of all utility facilities to be owned and operated by the utility whose construction is

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projected to commence during the ensuing ten (10) years, as well as those facilities to be removed from service during the planning period;

(b) a description of efforts by the utility to coordinate the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility and explanation of the basis for such projections, and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this act.

(2) The plan shall be made available to the public by the department, and the utility shall be required to give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental science, the department of highways, the department of public service regulation, the department of state lands and the department of intergovernmental relations. Citizen environmental protection and resource planning groups, and other interested persons may obtain a plan by written request and payment therefor.

Section 15. If a utility lists and identifies a proposed utility facility in its plan, submitted pursuant to section 14 of this act, as one on which construction is proposed to be commenced within the five (5) year period next proceeding submission of the plan, the department shall commence examination and evaluation of the site to determine whether construction of the proposed facility would unduly impair the environmental values in section 16 of this act. This study may be continued until such time as a utility files an application for a certificate under section 6 of this act. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate.

Section 16. In evaluating long-range plans, conducting five-year site reviews, and evaluating applications for certificates of site and facility, the board and department shall give consideration to the following list of environmental factors and may, by regulation, add to the categories of this section:

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(1) Energy needs.

(a) Growth in demand and projections of need.

(b) Availability and desirability of alternative sources of energy.

(c) Availability and desirability of alternative sources of energy in lieu of the proposed facility.

(d) Promotional activities of the utility which may have given rise to the need for this facility.

(e) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality.

(f) Conservation activities which could reduce the need for more energy.

(g) Research activities of the utility of new technology available to it which might minimize environmental impact.

(2) Land use impacts.

(a) Area of land required and ultimate use.

(b) Consistency with areawide state and regional land use plans.

(c) Consistency with existing and projected nearby land use.

(d) Alternative uses of the site.

(e) Impact on population already in the area; population attracted by construction or operation of the facility itself; impact of availability of energy from this facility on growth patterns and population dispersal.

(f) Geologic suitability of the site or route.

(g) Seismologic characteristics.

(h) Construction practices.

(i) Extent of erosion, scouring, wasting of land—both at site and as a result of fossil fuel demands of the facility.

(j) Corridor design and construction precautions for transmission lines or aqueducts.

(k) Scenic impacts.

(l) Effects on natural systems, wildlife, plant life.

(m) Impacts on important historic architectural, archeological, and cultural areas and features.

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(n) Extent of recreation opportunities and related compatible uses.

(o) Public recreation plan for the project.

(p) Public facilities and accommodation.

(q) Opportunities for joint use with energy intensive industries, or other activities to utilize the waste heat from facilities.

(3) Water resources impacts.

(a) Hydrologic studies of adequacy of water supply and impact of facility on stream flow, lakes and reservoirs.

(b) Hydrologic studies of impact of facilities on ground water.

(c) Cooling system evaluation including consideration of alternatives.

(d) Inventory of effluents including physical, chemical, biological, and radiological characteristics.

(e) Hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments.

(f) Relationship to water quality standards.

(g) Effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses; relationship to projected uses; relationship to water rights.

(h) Effects on plant and animal life, including algae, macroinvertebrates, and fish population.

(i) Effects on unique or otherwise significant ecosystems; e.g., wetlands.

(j) Monitoring programs.

(4) Air quality impacts.

(a) Meteorology. Wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion.

(b) Topography. Factors affecting dispersion.

(c) Standards in effect and projected for emissions, design capability to meet standards.

(d) Emissions and controls.

(i) Stack design.

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(ii) Particulates.

(iii) Sulfur Oxides.

(iv) Oxides of Nitrogen.

(v) Heavy metals, trace elements, radioactive materials and other toxic substances.

(e) Relationship to present and projected air quality of the area.

(f) Monitoring program.

(5) Solid wastes impact.

(a) Solid waste inventory.

(b) Disposal program.

(c) Relationship of disposal practices to environmental quality criteria.

(d) Capacity of disposal sites to accept projected waste loadings.

(6) Radiation impacts.

(a) Land use controls over development and population.

(b) Wastes and associated disposal program for solid, liquid, radioactive and gaseous wastes.

(c) Analyses and studies of the adequacy of engineering safeguards and operating procedures.

(d) Monitoring. Adequacy of devices and sampling techniques.

(7) Noise impacts.

(a) Construction period levels.

(b) Operational levels.

(c) Relationship of present and projected noise levels to existing and potential stricter noise standards.

(d) Monitoring. Adequacy of devices and methods.

Section 17. Notwithstanding any other provision of law, no state or regional agency, or municipality or other local government may require any approval, consent, permit, certificate or other condition for the construction, operation or maintenance of a utility facility authorized by a certificate issued pursuant to the provisions of this act; except that the state air and water quality agency or agencies shall retain authority which they have or may

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be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards. Nothing in this act shall prevent the application of state laws for the protection of employees engaged in the construction, operation or maintenance of such facility.

Section 18. Revocation or suspension of certificate. A certificate may be revoked or suspended:

(1) for any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the board's refusal to grant a certificate; or

(2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) for violation of the provisions of this act the regulations issued thereunder, or orders of the board or department.

Section 19. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this act or a rule adopted under this act is not being enforced, the court may order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a utility to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from the operation of a utility facility.

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Section 20. (1) The board and department may adopt rules implementing the provisions of this act.

(2) The board and the department shall have continuing authority and responsibility for monitoring the operations of all certificated facilities, for assuring continuing compliance with this act and certificates issued hereunder, and for discovering and preventing noncompliance with this act and such certificates.

Section 21. (1) Whoever

(a) without first obtaining a certificate of site and facility required under section 4, commences to construct or operate a utility facility after the effective date of this act; or

(b) having first obtained a certificate of site and facility, constructs, operates or maintains a utility facility other than in compliance with the certificate; or

(c) causes any of the aforementioned acts to occur; shall be liable to a civil penalty of not more than ten thousand dollars ($10,000) for each violation. Each day of a continuing violation shall constitute a separate offense. The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the first district court of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than ten thousand dollars ($10,000) for each violation or imprisoned for not more than one (1) year, or both. Each day of a continuing violation shall constitute a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it shall refer the matter to the attorney general who may bring a civil action on behalf of the state in the first district court of Montana for injunctive or other appropriate relief against the violation and to enforce the act or a certificate issued hereunder, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) All fines collected shall be deposited in the state general fund.

Section 22. Grants, gifts and funds. The department shall have authority to receive grants, gifts and other funds from any public or private source, to assist in its activities under this act.

Section 23. This act supersedes other laws or regulations. If any provision of this act is in conflict with any other law of

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this state, or any rule or regulation promulgated thereunder, this act shall govern and control, and such other law, rule or regulation shall be deemed superseded for the purpose of this act.

Section 24. Severability. If any provision of this act, or its application to any person is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected.

Section 25. This act shall become effective on passage and approval.

Approved: March 16, 1973.

CHAPTER NO. 328

An Act to Amend Section 75-5903, R.C.M. 1947, to Restore the Provisions for Additional Trustees for a Third Class High School District as They Existed Prior to the 1971 Codofication and General Revision of Title 75.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-5903, R.C.M. 1947, is amended to read as follows:

"75-5903. **Request and determination of number of high school district additional trustee positions.** As provided in subsection (2) (b) of section 75-5902, each high school district, except a high school district operating a county high school, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without representation on the high school district trustees under the provisions of subsection (2) (a) of section 75-5902, request the establishment of such additional trustee positions.

A request for additional trustee positions shall be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(1) The taxable valuation of the elementary district which has its trustees placed on the high school trustees shall be divided by the number of positions on the trustees of such elementary district to determine the taxable valuation per trustee position.

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(2) The taxable valuation used for the calculation in subsection (1) above shall be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.

(3) The taxable valuation determined in subsection (2) above shall be divided by the taxable valuation per trustee position calculated in subsection (1) above. The resulting quotient shall be rounded off to the nearest whole number.

The number determined in subsection (3) above shall be the number of additional trustee positions except that the number of additional trustee positions shall not exceed four (4) in a first or second class high school district or two (2) in a third class high school district *except* when two-thirds (⅔) or more of the high school enrollment of the high school district and two-thirds (2/3) or more of the taxable valuation of the high school district *are* located outside of the elementary district which has its trustees placed on the high school district trustees. *When this situation exists, three (3) additional trustees shall be elected from the elementary school districts where the high school is not located and one (1) additional trustee shall be elected at large in the high school district."*

Approved: March 16, 1973.

CHAPTER NO. 329

An Act Relating to the Work Week of Deputy Sheriffs of First Class and Second Class Counties.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 16-3705.1, R.C.M. 1947, which reads as follows:

16-3705.1. Work week of any deputy sheriff of a first and second class county. Any person employed as a deputy sheriff of a first and second class county shall not be forced to work in excess of forty (40) hours per week, except in case of an emergency and shall be entitled to two (2) days off in each seven (7) day period.

Approved: March 16, 1973.

CHAPTER NO. 330

An Act Amending Section 66-411, R.C.M. 1947, by Providing for

Licenses for Advanced Barber Training Programs, Clinics, or Seminars.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-411, R.C.M. 1947, is amended to read as follows:

"66-411. **Fees to be paid by apprentices, students, barbers and barber shops.** (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card shall be twenty-five dollars ($25.00). The fee to be paid by an applicant for an examination to determine his or her fitness to receive a certificate of registration to practice barbering as defined in this act, shall be twenty dollars ($20.00), and for the issuance of said certificate an additional five dollars ($5.00).

(2) Each person registered as a barber or barber apprentice, shall on or before the first day of July of each year pay a license fee of five dollars ($5) for the renewal of his or her certificate of registration, and if any barber shall fail to have such certificate renewed on or before the first day of July of each year such barber shall upon the renewal of said certificate of registration pay a penalty, or a restoration fee of ten dollars ($10), in addition to the regular fee of five dollars ($5) provided for herein, and if a certificate of registration is not renewed within one (1) year after date of expiration thereof, such barber shall not be entitled to have such certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for by this section. Provided, further, however, that physically handicapped men and women, trained for the barber profession by the state bureau of civilian rehabilitation and certified by that department as having successfully completed a nine (9) months' course in a reputable barber college will not be required to pay any fees, but will for a period of one (1) year immediately following their training be exempted from all except the sanitary provisions of the barber act, or any of its amendments, and provided, further, that no other or additional license, or fee, shall be imposed upon barbers, or barber apprentices, by any municipality or other subdivision of the state of Montana.

(3) In addition to the fees and charges now provided by existing law, all barbershops heretofore established, and which have been under the inspection of the board of barber examiners, shall pay an annual license fee of five dollars ($5). Barbershops hereafter established shall pay an initial inspection fee of twenty dollars ($20) for the first year or portion thereof, and shall pay an annual license fee of five dollars ($5).

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(4) All barber shops, schools or college licenses shall expire on the first day of July of each year, following the issuance of said license, and every owner or manager of a barber shop, school or college which continues in active operation shall annually, on or before July first renew his barber shop, school or college license and pay the required fee. For the first year this act is in effect, all licenses which expire on the thirty-first day of May shall be deemed in force until the first day of July.

Every barber shop which shall fail to have such license renewed on or before the first day of July of each year shall upon the renewal thereof pay a penalty, or a restoration fee, of ten dollars ($10.00), and each barber school or college which shall fail to have such license renewed on or before the first day of July of each year shall upon the renewal thereof pay penalty, or restoration fee, of fifty-five dollars ($55.00).

Any person conducting in this state any advanced barber training program, clinic, or seminar for barbers as defined in this Chapter, shall pay an annual license fee of fifty dollars ($50) to the board of barbers, or a ten (10) day license fee of fifteen dollars ($15), and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the board at reasonable times during operation."

Approved: March 17, 1973.

CHAPTER NO. 331

An Act Providing an Increase in Age From Twenty-one (21) to Twenty-two (22) Years for an Unmarried Child to be a Full-time Student in an Accredited School in the "Beneficiary" Definition in the Workmen's Compensation Act, Title 92, R.C.M. 1947; and Amending Section 92-413, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 92-413, R.C.M. 1947, is amended to read as follows:

"92-413. **Beneficiary defined.** "Beneficiary" means and shall include a surviving wife or husband*; an unmarried* surviving child or children under the age of eighteen *(18)* years*;* or an unmarried child under the age of *twenty-two (22)* years who is a full-time student in an accredited school*;* an invalid child or invalid children over the age of eighteen *(18)* years*;* provided, however, that no invalid child over the age of eighteen *(18)* years shall be considered

a beneficiary unless dependent upon the decedent for support at the time of injury."

Approved: March 17, 1973.

CHAPTER NO. 332

An Act Providing for Inclusion of Certain Employees of the Division of Workmen's Compensation within the Joint Merit System.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-121, R.C.M. 1947, which reads as follows:

92-121. Merit system. Employees of the division, except the administrator, are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3 (h), or by any other federal law or regulation.

Approved: March 17, 1973.

CHAPTER NO. 333

An Act to Provide for Time and One-half Pay for Overtime for Police Officers.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 11-1832.2, R.C.M. 1947, which reads as follows:

11-1832.2. Members of police departments of cities of the first and second class, except those officers holding the rank of captain or above, are entitled to compensation for overtime as provided under section 41-2303 (b).

Approved: March 17, 1973.

CHAPTER NO. 334

An Act Amending Section 40-2726, R.C.M. 1947, by Providing Fees for Filing Policy Forms and Related Papers with the Insurance Commissioner.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 40-2726, R.C.M. 1947, is amended to read as follows:

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"40-2726. **Fees and licenses.** (1) The commissioner shall collect in advance, and the persons so served shall so pay to the commissioner, the following fees and licenses:

(a) Certificates of authority.

(i) Application for original certificate of authority: For filing applications for certificate of authority, articles of incorporation (except as provided in subsection (b), below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application, and for issuance of an original certificate of authority, if issued:

Domestic insurers ..... $ 30.00

Foreign insurers 300.00

(ii) Annual continuation of certificate of authority 300.00

(iii) Reinstatement of certificate of authority 25.00

(b) Articles of incorporation:

(i) Filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) Filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 10.00

(c) Filing bylaws or amendment thereto, where required 5.00

(d) Filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) Agent's license, property, casualty, surety, title insurance agents, and including disability insurance without additional license or fee when written by property, casualty, or surety insurer otherwise represented by the agent:

(i) Application for original license, and including issuance of license, if issued 10.00

(ii) Appointment of agent, each insurer 5.00

(iii) Annual renewal or appointment of agent, each insurer 5.00

(iv) Temporary license 10.00

(f) Solicitor's license:

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(i) Application for original license, including issuance of license, if issued 5.00

(ii) Annual continuation of license 5.00

(g) Agent's license, life, disability insurance:

(i) Application for original license, each insurer 5.00

(ii) Annual continuation or renewal of license, each insurer 5.00

(iii) Temporary license, each insurer 5.00

(h) Examination for license as agent or solicitor, each examination 10.00

(i) Surplus line agent's license:

(i) Application for original license and for issuance of license, if issued 25.00

(ii) Annual renewal or continuation of license 25.00

(j) Adjuster's license:

(i) Application for original license and for issuance of license, if issued 10.00

(ii) Annual continuation or renewal of license 10.00

(k) Insurance vending machine license, each machine, each year 10.00

(l) Commissioner's certificate under seal (except when on certificates of authority or licenses) 1.00

(m) Copies of documents on file in the commissioners office, per page ..... .50

(n) Policy forms:

(i) Filing each policy form 25.00

(ii) Filing each applicaion, rider, endorsement, amendment, insert page, schedule or rates and clarification of risks 10.00

(iii) Maximum charge if policy and all forms submitted at one time, or resubmitted for approval within 180 days 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fees and licenses received by him under this section.

(3) The fees provided for in this section shall be in lieu of all fees heretofore payable with respect to insurance or insurers under section 25-101.''

Approved: March 17, 1973.

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CHAPTER NO. 335

An Act to Repeal Section 69-5219.1, R.C.M. 1947, Pertaining to Registration of Registered Medical Facilities.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 69-5219.1, R.C.M. 1947, is repealed.

Approved: March 17, 1973.

CHAPTER NO. 336

An Act to Add a New Section to Title 16, Chapter 43, R.C.M. 1947, Relating to Public Hospital Districts; Providing for a Definition of the Term "Hospital Facilities" as used in the Chapter.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is added to chapter 43, title 16, R.C.M. 1947, a new section, reading as follows:

As used in this chapter, unless the context otherwise requires, "hospital facilities" means a hospital or a hospital-related facility, including out-patient facilities, public health centers, rehabilitation facilities, long-term care facilities and infirmaries.

Approved: March 17, 1973.

CHAPTER NO. 337

An Act to Amend Sections 16-4201, 16-4203, 16-4204, 16-4205, 16-4206, 16-4207, 16-4209 and 16-4211, R.C.M. 1947, Defining Persons Qualified to Petition for and Providing Percentage Necessary for Creating, Stopping Procedure, or Dissolving a Mosquito Abatement District; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-4201, R.C.M. 1947, is amended to read as follows:

"16-4201. **Definitions.** In this act the expression:

(a) "Commissioners" *means* the board of county commissioners of any county;

(b) "District" *means* any mocquito contdol district created under the provisions of this act;

(c) "Board" *means* the mosquito control board for any district created under this act;

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(d) "Mosquito" *means* any insect belonging to the family Culicidae of the order Diptera;

(e) "Mosquito pest" *means* any group of mosquitoes which annoy man or his domestic animals or transmit any disease of man or of his domestic animals."

Section 2. Section 16-4203, R.C.M. 1947, is amended to read as follows:

"16-4203. **Petition for district—hearing.** When a petition signed by *not less than* twenty-five per cent (25%) of the *owners* of any *property within the boundaries and whose names appear as such property owners upon the last completed assessment role of the county in which the* proposed district *is situated,* is presented to the board of commissioners of such county, asking for the creation of a mosquito control district, the commissioners shall set a day for the hearing of the same and order notice thereof to be givin to all persons interested. Said petition shall set forth the boundaries of the proposed district *and request that the property within the boundaries be organized into a mosquito control district.* Such proposed district may include any incorporated or unincorporated city or town of the county."

Section 3. Section 16-4204, R.C.M. 1947, is amended to read as follows:

"16-4204. **Notice of hearing—publication—posting.** *The commissioners by resolution shall fix a time for a* hearing *upon said petition at not less than two (2) nor more than four (4) weeks from the time of presentation thereof. Commissioners shall cause* notice *to* be posted in three (3) public places within the district, and where the district is partly in one county and partly in another county, notice must be posted in each county, but not in three (3) places in each county. *The notice shall state that any qualified elector within the boundaries of the proposed district in which the proposed district is situated may appear before the board at the time of hearing and show cause why the district should not be created, or may file his written objection to creation of the district at any time before the date of said hearing. The commissioners shall also cause notice to be given of the time and place of the hearing and methods of objection by publication* in a newspaper within or nearest the district, and if the district is partly in one (1) county and partly in another county, in a newspaper in each county, if such newspaper exists. *The* publication must be for two (2) weekly issues. *Posting* and first publication shall be at least ten (10) days before the hearing. Accompanying petition for creation of a district shall be sufficient funds to defray the cost of publication and posting."

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Section 4. Section 16-4205, R.C.M. 1947, is amended to read as follows:

"16-4205. *Hearing—objections* **to district—creation of district.** *At the time fixed for said hearing, the commissioners shall determine whether or not the petition complies with the requirements hereinbefore set forth, and whether or not the notice required herein has been published and posted as required. At such hearing, the board must hear all competent and relevant testimony offered in support of or in opposition to said petition and creation of said district, and shall also consider the written objections to the creation of the district. Said hearing may be adjourned from time to time for determination of facts, but no adjournment shall exceed two (2) weeks in all from and after the date originally noticed and published for the hearing.* At such a hearing or at any time following the first (1st) publication of notice of such hearing, until the time of said hearing, any *qualified elector* may file his written objections to the creation of the district. Such objections shall be delivered to the county clerk, who shall endorse thereon the date of its receipt by him. Upon such hearing, if the commissioners *determine there has been compliance with all of the requirements herein set forth,* they shall by an order, duly made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the description of land contained therein, *except, where, at the time of the hearing, the commissioners find that a geographical area desires exclusion from the area contained within the boundaries of the proposed district, the hearing may be adjourned to permit the commissioners to consult the department of health and environmental sciences to determine if it would be advisable to exclude the geographical area from the district. Upon reconvening, the commissioners shall define and establish such boundaries as are advisable.* Provided,

(1) that if fifty-one per cent (51%) or more of the *qualified electors* within the *boundaries of the* proposed district file their written objections to the creation of such district, the commissioners shall not proceed with the creation of such district*;*

(2) or, if, as the result of objections filed, the commissioners, in their discretion, determine the question in doubt whether or not the creation of a district is to the best interest of an area and the residents therein, the commissioners may cause the issue to be determined by referendum at the next regular election.

Before setting a time for hearing, the commissioners may cause a survey and study of the area sought to be included in such district to be made by competent personnel and may submit a report thereof to the *department of health and environmental sciences* for its review and recommendations."

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Section 5. Section 16-4206, R.C.M. 1947, is amended to read as follows:

"16-4206. **Enlargement of districts — petitions — objections.** Any such district at any time subsequent to its creation may be enlarged to include adjacent land upon the presentation to the board of county commissioners of a petition signed by the *not less than* twenty-five per cent (25%) of the *owners of any property* lying within the *boundaries of the* area proposed to be annexed to the district *and whose names appear as such property owners upon the last completed assessment role of the county in which the said proposed area is situated.* If any such petition for enlargement of an existing district is presented, the board of county commissioners shall set a time for hearing thereon and shall cause notice thereof to be given in the manner provided by section 16-4204. If, upon such hearing, the commissioners believe it to be to the best interests of the area and those resident therein that such area be annexed to the district, they shall by an order duly made and entered on their minutes, declare the area in question to be annexed to the district, and such annexed area shall thenceforth be considered a part of such district for all purposes as thereof originally included therein. If fifty-one per cent (51%) or more *of the qualified electors of* the area proposed to be annexed to the district *file their objection to the creation of such district,* the commissioners shall not act on such petition. *If such additional area is added, such territory shall be subject to the tax authorized by this act together with the preexisting area of the district. Such tax shall be uniform for the area added and the territory in the district as enlarged.*"

Section 6. Section 16-4207, R.C.M. 1947, is amended to read as follows:

"16-4207. **Mosquito control board—members—term—per diem.** Upon the creation of any mosquito control district, the commissioners shall appoint a mosquito control board composed of not less than three (3) nor more than five (5) members, each of whom shall be *resident freeholder* within *the boundaries of* the district *and whose name appears as such property owner upon the last completed assessment role of the county in which said district is situated.* The terms of office for the first appointed members shall be so arranged that they do not all expire at the same time, and for that purpose may be set for any length of time not more than three (3) years. Thereafter the terms of all members shall be three (3) years, the term of one (1) member expiring on the first (1st) day of July in each year. *The* board shall be a body corporate and shall act as such, and *the* members shall be public officers and they shall organize each year by choosing a chairman who shall be from among the appointed members, and a secretary. All such

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board members shall serve without pay, except that the appointed members shall receive per diem *as allowed by state law* for each day when the board is actually in session and their necessary mileage as provided by law. The health officer having jurisdiction in the proposed district, sanitarian or a member of his staff, and the county extension agent, if the county has any, or all such officers, shall be ex officio members of such board without vote."

Section 7. Section 16-4209, R.C.M. 1947, is amended to read as follows:

"16-4209. *Department of health and environmental sciences*—**duties.**

(1) It shall be the duty of *the department of health and environmental sciences* to advise the commissioners of any county relative to the creation of mosquito control districts within such county and upon request to advise the boards of such districts in connection with their control programs.

(2) Annually on or before the first (1st) day of February, the board of each district shall submit to the department of health *and environmental sciences and the department of agriculture* for *their* review and advice a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year."

Section 8. Section 16-4211, R.C.M. 1947, is amended to read as follows:

"16-4211. **Dissolution of mosquito control district—hearing—notice—unexpended funds.** A mosquito control district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least fifty-one per cent (51%) of the *qualified electors.* Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three (3) public places within said district and to be published at least once in the official newspaper of the county, published in *the* district, such posting and publication to be at least ten (10) days before said date of hearing. If the district is partly in one (1) county and partly in another county, notice must be posted in each county but not three (3) *places* in each county, and notice must be published in the official newspaper of each county. If upon such hearing, the commissioners find such petition to be sufficient *and that the district is not indebted in any amount beyond the funds immediately available to extinguish all of its debts and obligations,* and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such

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district. The effective date of such dissolution shall be set by the commissioners at such time within the fiscal year as best conforms with the operations of the county budget *providing that before the dissolution shall be effective for all purposes, the mosquito control board of the district shall certify to the commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled together with legal proof thereof.* Any funds unexpended at the dissolution of a district shall be paid over into the county general fund, and where the district is partly in one (1) county and partly in another county, the funds shall be apportioned between the counties and such apportionment shall be based on the taxable value of *the property* which is within the district. Physical assets may be liquidated as provided for in section 16-1009, and where the district is partly in one (1) county and partly in another county, the proceeds of the sale of physical assets will be apportioned in like manner as the liquid assets.''

Section 9. This act is effective on its passage and approval.

Approved: March 17, 1973.

CHAPTER NO. 338

An Act to Amend Section 84-1840, R.C.M. 1947, Providing for the Allocation of Funds to Counties and Incorporated Cities and Towns for Construction, Reconstruction, Repairs and Maintenance of Roads, Streets and Alleys.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-1840, R.C.M. 1947, is amended to read as follows:

"84-1840. **Disposition of funds.** All taxes, interest and penalties collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the earmarked revenue fund to the credit of the state highway department.

(1) *Three million dollars ($3,000,000) of the* funds collected under this act shall be allocated each fiscal year to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance and repair of rural roads, and city or town streets and alleys, as provided in subsections (a) and (b) hereof,

(a) *One million two hundred thousand dollars ($1,200,000)* shall be divided among the various counties in the following manner:

(i) Forty per centum (40%) in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system.

(ii) Forty per centum (40%) in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns.

(iii) Twenty per centum (20%) in the ratio that the land area of each county bears to the total land area of the state.

(b) *One million eight hundred thousand dollars ($1,800,000)* shall be divided among the incorporated cities and towns in the following manner:

(i) Fifty per cent (50%) of the sum shall be divided in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana.

(ii) Fifty per cent (50%) shall be divided in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities and towns shall be used exclusively for the construction, reconstruction, maintenance and repair of rural roads, city or town streets and alleys, or for the share which such city, town or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system, or urban extensions thereto, provided that not more than *fifty percent (50%)* or one thousand dollars ($1,000), whichever amount is greater, of the funds allocated each fiscal year, beginning with the fiscal year starting July 1, 1971, to any county, incorporated city and town may be expended for maintenance and repair of rural roads or city or town streets.

(3) Upon receipt of the allocation provided herein, the county commissioners, in the case of counties, or the governing body, in the case of incorporated cities or towns, shall propose the expenditure of said funds to the state highway commission. The commission may consult with the county commissioners or the govern-

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ing body proposing expenditures before approving the same provided, however, that before any contract for the expenditure of funds provided herein shall be let, an agreement covering the same shall be executed by both the proposing body and the state highway commission.

(4) All construction, reconstruction, maintenance and repair authorized herein shall be pursuant to the design and subject to the supervision of the state highway commission, and all funds hereby allocated to counties, cities and towns shall be disbursed by the state highway commission to the lowest responsible bidder according to the bidding procedures specified in chapter 41, title 32 of this code except that not more than seven thousand five hundred dollars ($7,500) of the funds allocated each fiscal year to any county, incorporated city and town may be expended without being submitted to bids.

(5) The state highway commission shall make and establish such rules and regulations as may be necessary to carry out the intent of this act and shall keep records of the funds allocated to each city or town, and the subsequent expenditure of said funds.

(6) For the purposes of this act where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(7) For the purposes of this act where determination of mileage is necessary for distribution of funds it shall be the responsibility of the cities, towns and counties to furnish to the state highway commission a yearly certified statement indicating the total mileage within their respective areas applicable to this act. All mileage submitted shall be subject to review and approval by the state highway commission.

(8) None of the funds authorized by this section shall be used for the purchase of capital equipment."

Approved: March 17, 1973.

CHAPTER NO. 339

An Act Amending Section 8-111, R.C.M. 1947, Providing that the Submission of a Class C Motor Carrier Application Must Be Accompanied by the Names and Addresses of any Person, Firm, Corporation or Other Legal Entity With Whom the Applicant Has Executed a Contract for the Distribution, Delivery or Collection of Wares, Merchandise or Commodities, or the Transportation of Person; That Contracts Must Be in Writing, Exe-

cuted by the Parties, and Submitted to This Commission for Examination; that the Contracting Parties Must Appear and Offer Testimony in Support of the Applicant; and Providing An Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 8-111, R.C.M. 1947, is amended to read as follows:

"8-111. **Hearing to consider applications—notice—matters considered—manner of conducting hearings.** Upon the filing of such application by a class A or class B or class C motor carrier, except a class C motor carrier authorized to operate under the terms of a United States government contract, agency or department thereof, the board shall fix a time and place for hearing thereon, which shall not be less than ten (10) days after such filing. The board shall cause a copy of such petition and notice of hearing thereon to be served upon an officer or owner of any motor carrier that in the opinion of the board might be affected by the granting of any such certificate and upon any railroad company operating into or through any town or city located on the proposed route of the applicant, and upon the state highway commission, at least ten (10) days before the date of hearing, and any such motor carrier or railroad company, and the state highway commission, and the governing board or boards of any such county, town or city into or through which such route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to such proceedings, and may offer testimony for or against the granting of such certificate. *The submission of a class C motor carrier application must be accompanied by the names and addresses of any person, firm, corporation or other legal entity with whom the applicant has executed a contract for the distribution, delivery or collection of wares, merchandise or commodities, or transporting persons. Such contracts must be in writing, executed by the parties, and submitted to this commission for examination. The contracting parties must appear and offer testimony in support of the applicant.* If after hearing upon application for a certificate, the board shall find, from the evidence, that public convenience and necessity require the authorization of the service proposed, or any part thereof as the board shall determine, a certificate therefor shall be issued. In determining whether or not a certificate should be issued, the board shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad, or other existing transportation agency, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout twelve (12)

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months of the year and the effect which such proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby. Provided, however, that an application by a class A or a class B or a class C motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the board that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the board that public convenience and necessity do not require such proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over said route or in said territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require such motor carrier operation.

Provided further that any investigation, inquiry or hearing which the board has power to undertake or to hold, under the provisions of this act, may be undertaken or held by or before any member of the board, or by and before any agent or examiner of the board designated for the purpose by the board, and every finding, order, or decision made by a member of the board, or agent or examiner of the board so designated, together with a statement in writing of the reasons therefor which statement must be included in such finding, or order or decision, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the board and ordered filed in its office, shall be, and be deemed to be the finding, order or decision of the board; provided also, that any agent or examiner of the board designated as aforesaid, shall have power to administer oaths, examine witnesses and receive evidence."

Section 2. This act is effective on its passage and approval.

Approved: March 17, 1973.

CHAPTER NO. 340

An Act to Amend Section 23-3003, R.C.M. 1947, Providing for a Minimum Number of Deputy Registrars; that the Number of Appointed Deputy Registrars for Each County Shall Always be Equally Divided Between the Two (2) Major Political Parties; that Registration Cards Executed Before the Registration Deadline Shall be Accepted Three (3) Days After the Deadline; and Providing for Instruction of Deputy Registrars.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 23-3003, R.C.M. 1947, is amended to read as follows:

"23-3003. **Notaries public as deputy registrars—appointment of additional deputies—qualifications—duties.** (1) All notaries public are deputy registrars in the county in which they reside. They may register electors residing in any precinct within the county.

(2) The commissioners shall appoint *a minimum of* two (2) deputy registrars who are not notaries public, *a minimum of* one (1) from each of the two (2) major political parties, for each precinct in the county from lists of persons recommended by the political parties. If the parties fail to submit lists, the commissioners shall appoint deputy registrars without recommendations from the parties. *The number of appointed deputy registrars for each county shall always be equally divided between the two (2) major political parties.* A deputy registrar shall:

(a) Be a qualified taxpaying resident elector in the precinct for which he is appointed;

(b) Register electors residing in any precinct in the county*;*

(c) No duly appointed deputy registrar shall register any voter until such deputy registrar shall have been issued a certificate of approval by the county registrar, certifying that said deputy registrar has received instructions on registration procedure from the county registrar.

(3) *Within* three (3) days after a registration card is filled out, deputy registrars shall forward the card to the registrar. *Registration cards properly executed prior to the registration deadline shall be accepted by the registrar for three (3) days after the deadline."*

Approved: March 17, 1973.

CHAPTER NO. 341

An Act Amending Section 40-3011, R.C.M. 1947, Relating to Standard Valuation Law in Life Insurance; Amending Section 40-3831, R.C.M. 1947, Relating to Standard Nonforfeiture Law in Life Insurance; Providing for Adoption of Annuity Mortality Tables and Permissible Interest Rates in Valuation of Annuity and Insurance Contracts; and Providing for an Effective Date.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 40-3011, R.C.M. 1947, is amended to read as follows:

"40-3011. **Standard valuation law—life insurance.** (1) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In the case of an alien insurer, such valuation shall be limited to its insurance transactions in the United States. For the purpose of making such valuation the commissioner may employ a competent actuary who shall be paid by the insurer for which the service is rendered; but a domestic insurer may make such valuation and it may be received by the commissioner upon satisfactory proof of its correctness. In lieu of the valuation of the reserves herein required of any foreign or alien insurer, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

Any insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(2) This subsection shall apply to only those policies and contracts issued prior to the operative date of section 40-3831 (the standard nonforfeiture law).

Except as otherwise provided in (3)(a)(vii)(A) of this section for group annuity and pure endowment contracts, the minimum standard of valuation on all policies of domestic life insurers issued prior to January 1, 1922, shall be the American experience

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table of mortality and interest at three and one-half per cent (3½%) per annum, with preliminary term insurance for the first policy year, and for policies of such insurers issued subsequent to December 31, 1921, shall be the American experience table of mortality with interest at three and one-half per cent (3½%) per annum, with preliminary term insurance for the first policy year, except as follows: If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than twenty (20) years from the date of the policy, or under an endowment preliminary term policy, exceeds that charged for life insurance under twenty (20) payment life preliminary term policies of the same insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a twenty (20) payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium reserve sufficient to provide for a pure endowment at the end of the premium payment period equal to the difference between the value at the end of such period of such a twenty (20) payment life perliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy.

Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(3) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 40-3831 (the standard nonforfeiture law), *except as otherwise provided in (3)(a)(vii)(A) of this section for group annuity and pure endowment contracts issued prior to such operative date.*

(a) *Except as otherwise provided in (3)(a)(vii)(A) of this section, the* minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in subdivision (b), three and one-half per cent (3½%) interest, *or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986, four per cent (4%) interest,* and the following tables:

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies—the commissioner's 1941 standard ordinary mortality table for such policies issued prior to the operative date of subsection (8-a) of section 40-3831 (the standard nofor-

feiture law) as amended, and the commissioner's 1958 standard ordinary mortality table for such policies issued on or after such operative date; except, that for any category of such policies issued on female risks, modified net premiums and present values, referred to in subdivision (b), may be calculated, at the option of the insurer with the approval of the commissioner, according to an age younger than the actual age of the insured.

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 standard industrial mortality table for such policies issued prior to the operative date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioner's 1961 standard industrial mortality table for such policies issued on or after such operative date.

(iii) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(iv) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the group annuity mortality table for 1951, any modification of such table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(v) For total and permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the insurer, the class (3) disability table (1926); and for policies issued prior to January 1, 1961, the class (3) disability table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vi) For accidental death benefits in or supplementary to policies—for policies issued on or after January 1, 1966, the 1959 accidental death benefits table; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the insurer, the intercompany double indemnity mortality table; and for policies issued prior to January 1,

1961, the intercompany double indemnity mortality table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vii) For group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the commissioner.

(A) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on the effective date of this subsection, as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation method defined in (3) (b) of this section and the following tables and interest rates:

(I) For individual annuity and pure endowment contracts issued prior to January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table, or any modification of this table approved by the commissioner, and six per cent (6%) interest for single premium immediate annuity contracts, and four per cent (4%) interest for all other individual annuity and pure endowment contracts.

(II) For individual annuity and pure endowment contracts issued on or after January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table, or any modification of the table approved by the commissioner, and three and one-half per cent (3½%) interest.

(III) For all annuities and pure endowments purchased prior to January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table, or any modification of the table approved by the commissioner, and six per cent (6%) interest.

(IV) For all annuities and pure endowments purchased on or after January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table, or any modification of this table approved by the commissioner, and three and one-half per cent (3½%) interest.

After the effective date of this amendatory act of 1973, any insurer may file with the commissioner a written notice of its election to comply with the provisions of the subsection (A) after a specified date before January 1, 1979, which shall be the operative date of the subparagraph for such insurer provided an insurer

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may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this subparagraph for such insurer shall be January 1, 1979.

(b) Reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (A) over (B), as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(B) A net one year term premium for such benefits provided for in the first policy year.

Reserves according to the commissioner's reserve valuation method for (i) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) annuity and pure endowment contracts, (iii) disability and accidental death benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies, shall be calculated by a method consistent with the principles of this subdivision (b), except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(c) In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in subdivision (b) and the

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mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(d) Reserves for any category of policies, contracts or benefits as established by the commissioner, may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided. but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Provided, however, that reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to a rate of interest [lower than the rate of interest] used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonferfeiture benefits by more than one-half per cent (½%) the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

(e) Deficiency reserves. If the gross premium charged by any life insurer on any policy or contract is less than the net premium for the policy or contract according to the mortality table, rate of interest and method used in calculating the reserve thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period."

Section 2. Section 40-3831, R.C.M. 1947, is amended to read as follows:

"40-3831. **Standard nonforfeiture law—life insurance.** (1) This section shall be known as the standard nonforfeiture law.

(2) Nonforfeiture provisions—Life: In the case of policies issued on or after the operative date of this section as defined in subsection (11) of this section, no policy of life insurance, except as set forth in subsection (10) of this section, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder:

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(a) That in the event of default in any premium payment, after premiums have been paid for at least one full year, the insurer will grant, upon proper request not later than sixty (60) days after the due date of the premium in default, a paid-up nonforfeiture benefit, a cash surrender value of such amount as as of such due date of such value as may be hereinafter specified.

(b) That upon surrender of the policy within sixty (60) days after the due date of any premium payment in default after premiums have been paid for at least three (3) full years in the case of ordinary insurance, and five (5) full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty (60) days after the due date of the premium in default.

(d) That if the policy shall have become paid up by completion of all premium payments, or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance, or the fifth policy anniversary in the case of industrial insurance, the insurer will pay, upon surrender of the policy within thirty (30) days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

(e) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary, either during the first twenty (20) policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy.

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of this state; an explanation of the manner in which the cash surrender values and the paid-up nonforfeture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy; if a detailed statement of the method of computa-

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tion of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

(3) Any of the provisions or portions thereof set forth in subdivisions (a) through (f) of the foregoing subsection (2) which are not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy. The insurer shall reserve the right to defer the payment of any cash surrender value for a period of six (6) months after demand therefor with surrender of the policy.

(4) Cash surrender value—life: Any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by subsection (2) of this section, shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions if there had been no default, over the sum of:

(a) The then present value of the adjusted premiums as defined in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section, corresponding to premiums which would have fallen due on and after such anniversary, and

(b) The amount of any indebtedness to the insurer on account of or secured by the policy. Any cash surrender value available within thirty (30) days after any policy anniversary under any policy paid up by completion of all premium payments, or any policy continued under any paid-up nonforfeiture benefits, whether or not required by such subsection (2), shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on account of or secured by the policy.

(5) Paid-up nonforfeiture benefit—Life: Any paid-up nonforfeiture benefit available under the policy in the event of default in the premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy, or, if none is provided for, that cash surrender value which would have been required by this section in the ab-

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sence of the conditions that premiums shall have been paid for at least a specified period.

(6) The adjusted premium—Life: Except as provided in subsection (7-a), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

(a) The then present value of the future guaranteed benefits provided for by the policy;

(b) Two per cent (2%) of the amount of the insurance if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with the duration of the policy;

(c) Forty per cent (40%) of the adjusted premium for the first policy year;

(d) Twenty-five per cent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less, provided, however, that in applying the percentages specified in subdivisions (c) and (d) above, no adjusted premiums shall be deemed to exceed four per cent of the amount of insurance or uniform amount equivalent thereto. Whenever the plan or term of a policy has been changed, either by request of the insured or automatically in accordance with the provisions of the policy, the date of inception of the changed policy for the purposes of determining a nonforfeiture benefit or cash surrender value shall be the date as of which the age of the insured is determined for the purposes of the changed policy. The date of issue of a policy for the purposes of this subsection shall be the date as of which the rated age of the insured is determined.

(7) In the case of a policy providing an amount of insurance varying with the duration of the policy, the equivalent uniform amount thereof for the purpose of the preceding subsection (6) shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy, provided, however, that in

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the case of a policy for a varying amount of insurance issued on the life of a child under age ten (10), the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten (10).

(7-a) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased during the period for which premums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in subsections (6) and (7) except that, for the purposes of (b), (c), and (d) of subsection (6), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

(8) Except as otherwise provided in subsections (8-a) and (8-b), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated, at the option of the insurer with approval of the commissioner, according to an age younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent (3½%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty per cent (130%) of the rates of mortality according to such applicable table, provided further that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(8-a) In the case of ordinary policies issued on or after the operative date of this subsection (8-a) as defined herein, all ad-

justed premiums and present values referred to in this section shall be calculated on the basis of the commissioner's 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, *provided that such rate of interest shall not exceed three and one-half per cent (3½%) per annum except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986, and* provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1958 extended term insurance table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (8-a), any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred and sixty-six. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such insurer), this subsection shall become operative with respect to the ordinary policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January first, nineteen hundred and sixty-six.

(8-b) In the case of industrial policies issued on or after the operative date of this subsection (8-b) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of commissioners 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits *provided that such rate of interest shall not exceed three and one-half per cent (3 1/2) per annum except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986.* Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not

more than those shown in the commissioners 1961 industrial extended term insurance table. Provided, further, that for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (8-b), any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such insurer), this subsection shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January first, nineteen hundred and sixty-eight.

(9) Calculation of values—Life: Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (4), (5), (6), (7), (7-a), (8), (8-a) and (8-b) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithtsanding the provisions of subsection (4) of this section, additional benefits payable:

(a) In the event of death or dismemberment by accident or accidental means,

(b) In the event of total and permanent disability,

(c) As reversionary annuity or deferred reversionary annuity benefits,

(d) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply,

(e) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and

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has not become paid up by reason of the death of a parent of the child, and

(f) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits,

Shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(10) Exceptions. This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen (15) years or less expiring before age 66 for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsections (6), (7), (7-a), (8), (8-a), and (8-b) of this section is less than the adjusted premiums so calculated on a policy issued at the same age and for the same initial amount of insurance for a term defined as follows: For ages at issue fifty (50) and under, the term shall be fifteen (15) years; thereafter, the term shall decrease one (1) year for each year of age beyond fifty (50).

(11) Operative date. After the effective date of the act by which this section was originally enacted, any insurer could have filed with the state auditor a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1948, with respect to the policies specified in the notice. After the filing of such notice, then upon such specified date (which shall be the operative date for such insurer with respect to such policies), this section shall have become operative with respect to the policies specified in such notice thereafter issued by such insurer. As to all of its policies and contracts with respect to which an insurer makes no such election, the operative date of this section with respect to such policies and contracts for such insurer is January 1, 1948."

Section 3. This act is effective on its passage and approval.

Approved: March 17, 1973.

CHAPTER NO. 342

An Act Relating to the Conduct of Business of Cooperative Associations; Amending Sections 14-203 and 14-216, R.C.M. 1947;

Repealing Sections 14-217, 14-218 and 14-220, R.C.M. 1947; and

Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 14-203, R.C.M. 1947, is amended to read as follows:

"14-203. **First,** *regular and special meetings. (1) First meeting.* As soon as ten (10) or more shares of the capital stock shall be subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting such other business as shall properly come before them. Notice thereof shall be given by depositing same in the post office, properly addressed, to each subscriber, at least ten (10) days before the time fixed, stating the object, time, and place of said meeting. Directors of associations organized under this act shall be elected by the stockholders, and hold their office for such period of time as shall be provided in the bylaws.

(2) Regular and special meetings. (a) Unless the bylaws provide otherwise, stockholders' meetings shall be held at the principal office or such other place as the board may determine.

(b) An annual stockholders' meeting shall be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, such meeting shall be held within six (6) months after the close of the fiscal year at the call of the president or board.

(c) Special stockholders' meetings may be called by the president, board, or stockholders having one-fifth (1/5) of the votes entitled to be cast at such meeting.

(d) Written notice, stating the place, day and hour, and in case of a special stockholders' meeting the purposes for which the meeting is called, shall be given not less than seven (7) nor more than thirty (30) days before the meeting at the direction of the person calling the meeting.

(e) At any meeting at which stockholders are to be represented by delegates, notice to such stockholders may be given by notifying such delegates and their alternates. Notice may consist of a notice to all stockholders, or may be in the form of an announcement at the meeting at which such delegates or alternates are elected.

(f) A quorum at a regular or special meeting shall be as provided in the associations articles or bylaws. If the articles or bylaws do not define a quorum, ten percent (10%) of the first one hundred (100) stockholders plus five percent (5%) of any additional stock-

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holders, present in person, shall constitute a quorum. Stockholders represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken."

Section 2. Section 14-216, R.C.M. 1947, is amended to read as follows:

"14-216. *Merger or consolidation* **of co-operative associations.** It shall be lawful for two *(2)* or more co-operative associations formed, or which may be hereafter formed under the laws of the state of Montana, *to merge or consolidate with each other, or with one or more associations incorporated under the laws of another state or states relating to organization of cooperative associations, by complying with the provisions of chapter 2 of title 14, R.C.M. 1947, or with the applicable laws of the state where the surviving or new association has its principal place of business.*

(1) Plan for merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least ten percent (10%) of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation, and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation the plan shall also contain a copy of the proposed articles for the new association to be formed.

(2) Notice. Notice of the proposed plan, and in the case of consolidation, of the proposed new articles, shall be mailed to each stockholder of the associations to be affected thereby.

(3) Meeting of association. The notice shall advise the stockholders of each association of the time and place each association shall meet, at which time the proposal shall be considered and voted upon by each association. The meetings shall be held not less than thirty (30) or more than sixty (60) days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds (2/3) of those voting vote in its favor.

(4) Effective date of merger or consolidation. Within thirty (30) days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed and acknowledged by the president or vice-president, and by the secretary or assistant secretary of each association merging or consolidating, and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is

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in Montana, and with the Montana secretary of state. If the new or surviving association has its principal office in Montana, the merger or consolidation shall become effective as of the date of filing with the Montana secretary of state; if its principal office is outside the state of Montana, the merger or consolidation shall become effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.

(5) Sale or disposition of assets. At any meeting the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets, if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon, and if disposition or sale is approved by two-thirds (2/3) of those entitled to vote thereon voting at the meeting.

(6) Rights and duties of new or surviving association. After the effective date, the associations which are parties to the plan become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

The surviving or new association possesses all the rights and all the property of each of the individual associations, and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without his consent.

(7) Statute of limitations. No action may be maintained to invalidate any sale, merger or consolidation taken pursuant to this chapter because of the manner of its adoption, unless the action is commenced within two (2) years after the date of filing same."

Section 3. Sections 14-217, 14-218 and 14-220, R.C.M. 1947, are repealed.

Section 4. This act is effective on its passage and approval.

Approved: March 15, 1973.

CHAPTER NO. 343

An Act to Provide a Method to Determine Permanent Disability

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of Executive Officers to Implement Article VI, Section 6(2) of the 1972 Montana Constitution.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. (1) When an incumbent in the office of lieutenant governor, secretary of state, attorney general, auditor, or superintendent of public instruction is found to be permanently unable to perform the functions of his position, a vacancy exists.

(2) When a written declaration, made as hereinafter provided, is transmitted to the legislature, that any such officer is unable to discharge the powers and duties of this office, the legislature may convene in the manner provided for the convening of special sessions to determine whether such disability exists, or it may defer such determination to the next regular session of the legislature.

(3) If the legislature, within twenty-one (21) days after convening, whether in regular or special session, determines by two-thirds (⅔) vote of its members that such officer is unable to discharge the powers and duties of his office, this office shall be declared to be vacant and shall be filled as provided by the constitution of the state of Montana or laws enacted pursuant thereto.

(4) The written declaration required hereunder shall be made and transmitted by the lieutenant governor and attorney general unless one of them is the officer whose disability is in question. If the lieutenant governor is the subject of the declaration, the declaration shall be made by the governor and attorney general; if the attorney general is the subject of the declaration, the declaration shall be made by the governor and secretary of state.

Approved: March 17, 1973.

CHAPTER NO. 344

An Act to Create the Board of Public Education and the Board of Regents of Higher Education, and to Establish the State Board of Education as Provided for by Article X, Section 9 of the 1972 Montana Constitution; to Assign Powers and Duties to the Boards; to Amend Sections 79-2002 and 82-401, R.C.M. 1947; and to Repeal Sections 75-5601 through 75-5606 and 75-5608, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

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Section 1. (1) The board of public education is the board created by article X, section 9, subsection (3) of the 1972 Montana constitution.

(2) "Board of regents" means the board of regents of higher education created by article X, section 9, subsection (2) of the 1972 Montana constitution.

(3) The state board of education is the board composed of the board of public education and the board of regents as specified in article X, section 9, subsection (1) of the 1972 Montana constitution.

(4) "Commissioner" means the commissioner of higher education created by article X, section 9, subsection (2) of the 1972 Montana constitution.

Section 2. (1) The board of public education consists of seven (7) members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner are ex officio non-voting members of the board of public education.

(2) The board of regents consists of seven (7) members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction and commissioner are ex officio non-voting members of the board of regents.

(3) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

(a) Not more than four (4) may be from one (1) congressional district;

(b) Not more than four (4) may be affiliated with the same political party;

(c) The terms of members appointed to each board shall be seven (7) years except as provided in section 11 of this act;

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and such appointment shall preserve the balance required by subsections (a) and (b) above;

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(4) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before he may serve as a member of either board.

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Section 3. (1) There is a commissioner of higher education who is appointed by the board of regents.

(2) The board of regents shall prescribe the term and duties of the commissioner and shall set his compensation.

(3) The board of regents shall provide sufficient staff and office space to the commissioner for him to carry out his duties.

Section 4. (1) The board of public education and the board of regents shall each select a chairman from among their appointed members.

(2) The superintendent of public instruction shall serve as secretary to the board of public education, and the commissioner shall serve as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

Section 5. (1) The board of public education and the board of regents shall meet quarterly at the same location on the second Monday of April, July, September and December.

(2) Other meetings of either board may be called by the governor, by the chairman, by the secretary or by four (4) appointed members.

(3) The secretary to each board shall mail notice to each member at least seven (7) days in advance of all meetings of the respective board.

Section 6. Appointed members of the board of public education and the board of regents are entitled to twenty-five dollars ($25) per day and their necessary and actual expenses incurred for each day in attendance at board meetings or in the performance of any duty or service as a board member.

Section 7. (1) The board of public education and the board of regents meeting together as the state board of education shall be responsible for long-range planning, and for coordinating and evaluating policies and programs for the public educational systems of the state. The state board of education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.

(2) The governor is the president of, the superintendent of public instruction is the secretary to, and the commissioner shall be a non-voting participant at all meetings of the state board of education.

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(3) The state board of education may select a member to chair its meetings in the absence of the governor.

(4) A tie vote at any meeting may be broken by the governor.

(5) A majority of members appointed to the board of public education and the board of regents shall constitute a quorum for transaction of business as the state board of education.

(6) The board of public education and the board of regents shall meet at least twice yearly as the state board of education on any two of the dates specified in section 5, subsection (1).

(7) Other meetings of the state board of education may be called by the governor, by both the secretary to the board of public education and the secretary to the board of regents, or by joint action of eight (8) appointed members, four (4) each from the board of public education and the board of regents. All meetings of the state board of education shall be for the purposes set forth in subsection (1) above or for the purpose of considering other matters of common concern to the board of public education and the board of regents, but the state board of education may not exercise the powers and duties assigned by the 1972 Montana constitution and by law to the board of public education and the board of regents.

Section 8. The board of public education, the board of regents, and the state board of education each shall:

(a) Adopt rules not inconsistent with the constitution or laws of the state of Montana, necessary for its own government or the proper execution of the powers and duties conferred upon it by law;

(b) Adopt and use an official seal to authenticate its official acts; and

(c) Keep a record of its proceedings.

Section 9. (1) The powers and duties assigned to the "board of education," "state board of education" or "state board for vocational education" in title 75 and wherever else appearing in the Revised Codes of Montana, 1947, except in chapters 81 and 84 through 88 of title 75, subsections (14) and (15) of 75-5607, sections 28-301 through 28-304, 44-213, 59-1111, 66-505 and 77-909 through 77-911 and except as provided in subsection (3) below, are hereby assigned to the board of public education created in article X, section 9, subsection (3) of the 1972 Montana constitution.

(2) The powers and duties assigned in chapters 81 and 84 through 88 of title 75, R.C.M. 1947, and subsections (14) and (15)

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of 75-5607 R.C.M. 1947, as well as powers and duties assigned to the "state board of education ex officio regents," "state board of education of the state of Montana, ex officio regents of the Montana university system," "regents," "regents of the greater university system," "state board of regents" or "regents of the Montana system" wherever appearing in the Revised Codes of Montana, including those assigned to the "state board of education" and the "board of education" in sections 28-301 through 28-304, 44-213, 59-1111, 66-505 and 77-909 through 77-911 and excepting as provided in subsection (3) below, are hereby assigned to the board of regents of higher education created by article X, section 9, subsection (2) of the 1972 Montana constitution.

(3) The powers and duties assigned in chapters 1 and 5 of title 82A, R.C.M. 1947, to the "state board of education" or the "board of education" are hereby assigned to the state board of education composed of the board of public education and the board of regents of higher education as specified in article X, section 9, subsection (1) of the 1972 Montana constitution.

Section 10. (1) It is the intent of the legislature to provide smooth transition from the board of education provided for by the 1889 constitution to the board of public education and to the board of regents both created by the 1972 Montana constitution.

(2) In accordance with section 6, subsection (3) of the transition schedule of the 1972 Montana constitution, members of the 1889 board of education appointed before July 1, 1973, may continue to serve for the term to which each was appointed. A member appointed to the 1889 board of education before July 1, 1973, who chooses to fulfill his term of office may resign from the 1889 board of education and shall notify the governor of his resignation on or before July 1, 1973; and the governor shall appoint him on or before July 1, 1973, to serve on either the board of public education or the board of regents for the remainder of the term for which he was appointed.

(3) Appointments to fill vacancies existing on July 1, 1973, on the board of public education and on the board of regents:

(a) shall be made on or before July 1, 1973, so as to assure full membership on each board; and

(b) shall be for such number of months or years as will cause the expiration of one term on each board on February 1 of each year thereafter.

(4) Appointments to each board in succeeding years shall be made in accordance with section 2, subsection (3)(c) of this act.

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Section 11. (1) One seat of the appointed members on the board of regents shall be reserved for membership by a student appointed by the governor.

(2) The student shall be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents.

(3) The length of term of the student member shall be determined by the governor for not less than one (1) year and not more than four (4) years.

(4) The provisions of section 2, subsections (3)(a) and (b) of this act shall not apply to the student member and shall not affect the balance of the remaining appointive membership on the board of regents.

Section 12. Section 79-2002, R.C.M. 1947, is amended to read as follows:

"79-2002. **Definitions.** The following terms, wherever used or referred to in this act, shall have the following meanings:

(1) The term "public body" shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdvision of the state of Montana, and shall also include the *board of public education, the board of regents,* the state board of examiners, the state water conservation board, the state highway commission, or any other governmental agency of this state.

(2) The term "bonds" shall include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund."

Section 13. Section 82-401, R.C.M. 1947, is amended to read as follows:

"82-401. **General duties.** It is the duty of the attorney general:

1. To attend the supreme court and prosecute or defend all causes to which the state, or any officer thereof, in his official capacity, is a party; and all causes to which any county may be a party, unless the interest of the county is adverse to the state, or some officer thereof acting in his official capacity.

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2. After judgment in any of the causes referred to in the preceding subdivision, to direct the issuing of such process as may be necessary to carry the same into execution.

3. To account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county.

4. To keep a register of all cases in which he is required to appear, which must, during business hours, be open to the inspection of the public, and must show the county, district, and court in which the cases have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not; if not satisfied, the return of the sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention; and must deliver the same to his successor in office.

5. To exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business entrusted to their charge.

6. To give his opinion in writing, without fee, to the legislative assembly, or either house thereof and to any state officer, board, or commission, any county attorney, and to the board of county commissioners of any county of the state, when required upon any question of law relating to their respective offices.

7. When required by the public service, or directed by the governor, to assist the county attorney of any county in the discharge of his duties.

8. To bid upon and purchase in the name of the state, and under the direction of the board of examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases.

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding subdivision has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, under the direction of the board of examiners to redeem such

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property from such prior judgment, lien, or encumbrance; and all sums of money necessary for such redemption must, upon the order of the board of examiners, be paid out of any money appropriated for such purposes.

10. When in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents.

11. To discharge the duties of a member of the board of examiners, state board of land commissioners, board of state prison commissioners, and other duties prescribed by law.

12. To report to the governor, at the time prescribed by section 59-702 of this code, the condition of the affairs of his department, and to accompany the same with a copy of his docket and of the reports received by him from county attorneys, and to report to the governor as provided in section 59-705."

Section 14. It is the intent of the legislature that sections 1 through 11 of this act be codified in title 75, chapter 56, R.C.M. 1947.

Section 15. It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. Sections 75-5601 through 75-5606 and 75-5608, R.C.M. 1947, are repealed.

Approved: March 17, 1973.

CHAPTER NO. 345

An Act to Authorize Elementary District Trustees to Establish as Part of the Elementary School a Program For Five-Year-Olds; to Provide that the Program Be Funded Through the Foundation Program; to Provide a Funding Base for the First Year of the Program; Amending Sections 75-6902, 75-6903, 75-6917 and 75-7507, R.C.M. 1947; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

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Section 1. Section 75-6902, R.C.M. 1947, is amended to read as follows:

"75-6902. **Definition and calculation of average number belonging (ANB).** The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district. Average number belonging shall be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year, and by dividing such total by one hundred eighty (180). Attendance for a part of a morning session or a part of an afternoon session by a pupil shall be counted as attendance for one-half (½) day. *In calculating the ANB for pupils enrolled in a program established under section 75-7507 prior to January 1, 1974, or pursuant to section 75-7507(1), attendance at, or absence from, a regular session of the program for at least two hours of either a morning or an afternoon session will be counted as one-half (1/2) of a day attended or absent as the case may be.* When any pupil has been absent, with or without excuse, for more than ten (10) consecutive school days, including pupil instruction related days, his absence after the tenth (10th) day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated, individually, for each school except that when:

(1) more than one school of a district, other than a junior high school in an elementary district which has been approved and accredited as a junior high school, is located within the incorporated limits of a city or town, the average number belonging of such schools shall be based on the aggregate of all the regularly enrolled, full-time pupils attending such schools located within the incorporated limits of a city or town;

(2) a junior high school which has been approved and accredited as a junior high school is located within the incorporated limits of a city or town in which a high school is located, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for the purposes of calculating the average number belonging of the high schools located within the incorporated limits of such city or town; or

(3) a school has not been accredited by the board of education, the regularly enrolled, full-time pupils attending the non-

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accredited school shall not be eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for such district."

Section 2. Section 75-6917, R.C.M. 1947, is amended to read as follows:

"75-6917. **Purpose of state equalization aid and duties of the board of education for distribution.** The moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings, new grounds, and transportation.

The board of education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of education shall:

(1) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law;

(2) have the power to require such reports from the county superintendents, budget boards, county treasurers, and trustees as it may deem necessary; and

(3) in the months of December and April of each school fiscal year, order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue."

Section 3. Section 75-7507, R.C.M. 1947, is amended to read as follows:

"75-7507. **Kindergarten and preschool programs.** *(1) The trustees of an elementary district may establish a program capable of accommodating, at a minimum, all the children in the district who will be five (5) years old on or before the first grade enrollment closing date established by the district trustees for the school year for which the program is to be conducted. The program shall be an integral part of the elementary school and shall be financed and governed accordingly, provided that to be eligible for inclusion*

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in the calculation of ANB pursuant to section 75-6902, a child must have reached the age of five (5) on or before the first grade enrollment closing date established by the district trustees for the school year covered by the calculation.

(2) The trustees of an elementary school district may establish and operate a free preschool *program* for children between the ages of three (3) and *five (5)* years. When such preschool programs are established, they shall be an integral part of the elementary school and shall be governed accordingly. Financing of preschool programs shall not be supported by moneys available from state equalization aid."

Section 4. Section 75-6903, R.C.M. 1947, is amended to read as follows:

"75-6903. **Circumstances under which the regular average number belonging may be increased.** The average number belonging of a school for a given school fiscal year, calculated in accordance with the ANB formula prescribed in section 75-6902, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with section 75-6602. The average number belonging for such school shall be established by the county superintendent and approved, disapproved or adjusted by the superintendent of public instruction;

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with sections 75-6603, 75-6604 or 75-6605. The average number belonging for such high school shall be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend such high school;

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging shall be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June;

(4) the district is conducting, or will conduct during the ensuing school fiscal year, a special education class or program. The authorized increase in the average number belonging is prescribed by section 75-7813 and shall be available only when the operation of such special education class or program has been approved by the superintendent of public instruction in accordance

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with the special education law. In order to obtain the benefit of this increased average number belonging, a school shall not include the pupils attending a full-time special education class or program in the regular calculation of the average number belonging; or

(5) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging shall be based on estimates of increased enrollment approved by the superintendent of public instruction and shall be computed in the manner prescribed by section 75-6904.

(6) For the initial year of operation of a program established under section 75-7507 (1), the ANB to be used for budget purposes is the same as one-half (1/2) the number of five (5) year old children residing in the district as of October 1 of the preceding school year, either as shown on the official school census, or as determined by some other procedure approved by the superintendent of public instruction."

Section 5. This act is effective on July 1, 1974.

Approved: March 17, 1973.

CHAPTER NO. 346

An Act to Amend Section 75-6917, R.C.M. 1947, to Make Provision for the Return of Overpayments of State Equalization Aid Made to the School Districts.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-6917, R.C.M. 1947, is amended to read as follows:

"75-6917. **Purpose of state equalization aid and duties of the board of education for distribution.** The moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, kindergarten, recreation program, school food services program, new buildings, new grounds, and transportation.

The board of education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of education shall:

(1) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law;

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(2) have the power to require such reports from the county superintendents, budget boards, county treasurers, and trustees as it may deem necessary; and

(3) in the months of December and April of each school fiscal year, order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

Should a district receive more state equalization aid than it is entitled to, the county treasurer must return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the municipal division of the department of intergovernmental relations."

Approved: March 17, 1973.

CHAPTER NO. 347

An Act to Permit Consolidation of Police Departments and Sheriffs' Offices Within a County and Providing for Salaries of the Employees of the Consolidated Offices Thereof.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. On agreement of the legislative body of a city or town with the county commissioners of the county in which it is located, there may be established, in counties other than first and second class counties, in lieu of a police department and a sheriff's office, a department of public safety. The department shall be under the supervision of a commission selected jointly by the county commissioners and the city or town, legislative bodies consisting of not more than seven (7) members.

Section 2. The director of the department shall be the sheriff who may be elected, or may be appointed by the commission, in the event of municipal county government.

Section 3. Officers and patrolmen of the city or town police department and deputies of the county sheriff's office shall be subordinate to the director and shall have the power and perform the duties conferred on and required of police officers and patrol-

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men in cities and towns and of sheriff's deputies in counties, as required by state law and municipal ordinance. The director shall have the powers and perform the duties conferred on and required of sheriffs and police officers.

Section 4. The provisions of section 25-605, R.C.M. 1947 notwithstanding, the salaries of the director and employees of the department of public law enforcement shall be established by the commission and shall be paid by the city or town with the county commissioners of the county. Said salaries in any event shall not be less than that specified in section 25-605, R.C.M. 1947.

Section 5. For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees and orders of court and making sales thereunder and returns thereof, the director shall be known and designated as "sheriff of the city and county of .....," and each police officer, patrolman and deputy sheriff shall be known and designated as deputy sheriff.

Section 6. The provisions of this act are severable, and if any part or provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Approved: March 17, 1973.

CHAPTER NO. 348

An Act to Amend Section 95-2007, R.C.M. 1947, by Expanding the Sentencing Power of Justice and Police Courts.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 95-2007, R.C.M. 1947, is amended to read as follows:

"95-2007. **Sentence and judgment.** (a) If a judgment of acquittal is rendered the defendant must be immediately discharged.

(b) After a plea or verdict of guilty, or after a judgment against the defendant, the court must designate a time for sentencing, which must be within a reasonable time after the verdict or judgment is rendered. The sentence must be entered in the minutes of the court as soon as it is imposed.

(c) If the defendant pleads guilty, or is convicted either by the court or by a jury, the court must impose a sentence of fine or imprisonment or both, as the case may be. *The court may*

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suspend the execution of the sentence up to the maximum sentence allowed for the particular offense. The court may impose any reasonable conditions or restrictions on the sentence which it deems necessary. If alcohol or other drugs are involved the court may impose such rehabilitative measures as it deems advisable under the circumstances.

(d) The determination and imposition of sentence shall be the exclusive duty of the court."

Approved: March 17, 1973.

CHAPTER NO. 349

An Act to Add the Definition of District to Section 11-3803 and to Amend Section 11-3810 (2), R.C.M. 1947, to Require Membership of District Board Members on Each County Planning Board, and Providing Residency Requirements for a City-County Planning Board.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-3803, R.C.M. 1947, is amended to read as follows:

"11-3803. **Definitions.** As used in this act:

1. "City" includes incorporated cities and towns.

2. "City council" means the chief legislative body of a city or incorporated town.

3. "Planning board" means a city planning board or a joint city-county planning board.

4. "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, or sanitation, of recreation, and other related matters. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body.

5. "Public place" means any tract owned by the state or its subdivisions.

6. "Mayor" means mayor of a city.

7. "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

8. "Units of government" means any federal, state, regional, county, city or town.

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9. "Utility" means any facility used in rendering service which the public has a right to demand.

10. "Person" means individual firm, or corporation.

11. "Governing body or governing bodies" means the governing body of any governmental unit represented on a planning board.

12. "Plat" means a subdivision of land into lots, streets and areas, marked upon the earth and represented on paper; and includes re-plats or amended plats.

Section 2. Section 11-3810, R.C.M. 1947, is amended to read as follows:

"11-3810. **County planning boards and city-county planning boards—members—term of officer members and citizen members.** 1. A city-county planning board shall consist of not less than nine (9) members to be appointed as follows:

a. Two (2) official members *who reside outside the city limits* to be appointed by the board of county commissioners who may in the discretion of the board of county commissioners be employed by or hold public office in the county.

b. Two (2) official members to be appointed by the city council who may in the discretion of the city council be employed by or hold public office in the city.

c. Two (2) citizen members to be appointed by the mayor of the city.

d. Two (2) citizen members to be appointed by the board of county commissioners. The two (2) members *shall* reside outside the city limits but within the jurisdictional area of the planning board.

e. The ninth member shall be selected by the eight (8) officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council.

2. County planning boards shall consist of not less than five (5) members appointed by the board of county commissioners. *At least one (1) member of any county planning board existing at or formed after July 1, 1973, shall be a member of the governing board of a conservation district as provided for in section 76-105 or a state cooperative grazing district, if officers of either reside in said county.*

In the event that any city or town subsequently becomes

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represented on the county planning board pursuant to section 11-3815, additional members of the planning board representing such cities or towns shall be appointed by the respective city councils.

3. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be two (2) years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for one (1) or two (2) years in order that a minimum number of terms shall expire in any year."

Approved: March 17, 1973.

CHAPTER NO. 350

An Act Providing That Foster or Boarding Homes or Community Residential Facilities Serving Eight (8) or Fewer Specified Handicapped Persons Be Considered as a Residential use of Property; be Permitted to use all Residential Zones; and to Permit Cities and Counties to Require a Conditional use Permit to Maintain Such Homes in Residential Zones.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. "Community residential facility" means a group, foster, or other home specifically provided as a place of residence for developmentally disabled or handicapped persons who do not require nursing care.

Section 2. A foster or boarding home operated under the provision of sections 10-520 through 10-523, or community residential facility and serving eight (8) or fewer developmentally disabled or otherwise handicapped persons, is considered a residential use of property for purposes of zoning if the home provides care on a twenty-four (24) hour a day basis.

The homes are a permitted use in all residential zones, including, but not limited to, residential zones for single-family dwellings. Nothing in this paragraph shall be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of this paragraph; provided such home is licensed by the department of health and environmental sciences.

Approved: March 17, 1973.

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CHAPTER NO. 351

An Act Amending Section 82-1209, R.C.M. 1947, to Require the State Fire Marshal to Investigate the Exact Cause and Circumstances of Fires Damaging or Destroying Property; to Require Insurance Companies to Notify the Fire Marshal of the Cause and Circumstances of Certain Fires; and Requiring Officials Responsible for Fire Investigations to File Loss Incident Reports on Each Fire.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82-1209, R.C.M. 1947, is amended to read as follows:

"82-1209. **Investigation of fires.** (1) The cause, origin, and circumstances of each fire, by which property has been destroyed or damaged, shall be investigated to determine *the exact cause and circumstances.* The state fire marshal may superintend and direct the investigation if he deems it necessary.

(2) If the fire occurs within a municipality or organized fire district, the chief of the fire department shall make the investigation. If the fire occurs outside a municipality or organized fire district, the county sheriff shall make the investigation. If it appears that the fire was of suspicious origin, or if there was a loss of human life, the official responsible for the investigation shall notify the state fire marshal within twenty-four (24) hours, and shall file a written report of the cause with the state fire marshal within ten (10) days.

(3) *If the property was insured,* as soon as any adjustment has been made, a person representing the insurance company shall notify the *state fire marshal* of the amount of adjustment and the apparent cause and circumstances of the fire *on forms furnished by the state fire marshal.*

(4) Each official responsible for investigating fires shall file a fire *incident* report *on each and every fire* with the state fire marshal. Reports shall be on forms, and shall contain information, prescribed by the state fire marshal. *These reports shall be sent to the state fire marshal on a weekly basis."*

Approved: March 17, 1973.

CHAPTER NO. 352

An Act to Repeal Section 69-1910, R.C.M. 1947, Pertaining to Licensing of Explosive Magazines; to Repeal Section 69-1911,

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R.C.M. 1947, Pertaining to Inspection of Explosive Factories and Magazines; and to Repeal Section 69-1930, R.C.M. 1947, Pertaining to Storage of Kerosene, Petroleum or Caps in Unincorporated Towns and Regulations for Disposal of Materials After Dark.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Sections 69-1910, 69-1911 and 69-1930, R.C.M. 1947, are repealed.

Approved: March 17, 1973.

CHAPTER NO. 353

An Act Creating a Training Coordinator of County Attorneys within the Department of Justice; Providing that the Training Coordinator be Appointed by the Attorney General; Providing for the Functions of the Training Coordinator; and Providing an Immediate Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is created, within the department of justice, a training coordinator for county attorneys.

Section 2. The training coordinator shall be appointed by the attorney general from a list of three (3) names proposed and submitted by the Montana county attorneys association.

Section 3. The training coordinator shall perform the functions assigned by the department head. The functions may include, but are not limited to, the following:

(1) providing local training in current aspects of the criminal law for county attorneys and other law enforcement personnel;

(2) assisting in developing and disseminating standards, procedures and policies which will insure that criminal laws are applied consistently and uniformly throughout the state of Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs and other relevant criminal law information;

(4) providing assistance with research, briefs or other technical services requested by a county attorney or law enforcement official;

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(5) applying for and disbursing federal funds available to aid the prosecutorial function.

Section 4. This act shall become effective upon its passage and approval.

Approved: March 17, 1973.

CHAPTER NO. 354

An Act Amending Section 11-2702, R.C.M. 1947, to Allow a City or Town Governing Body to Extend the Application of its Zoning or Subdivision Regulations Beyond its Corporate Limits Where there is a City-County Planning Board if other Prerequisites Are Met.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-2702, R.C.M. 1947, is amended to read as follows:

"11-2702. **Districts for effecting building restrictions.** (1) For any or all of said purposes the local city or town council or other legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(2) The local city or town council, or other legislative body which has adopted a master plan pursuant to Title 11, chapter 38 may extend the application of its zoning or subdivision regulations or both beyond its limits in any direction, but not in a county which has adopted such regulations within the contemplated area; provided that a city of the first class as defined in section 11-201 of this code may not extend the application of its zoning or subdivision regulations or both more than three (3) miles beyond its limits, a city of the second class may not so extend more than two (2) miles beyond its limits, and a city or town of the third class may not so extend more than one (1) mile beyond its limits. Provided, further, that where two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by this section, then the extension of zoning or subdivision regulations

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or both by these cities shall terminate at a boundary line agreed upon by the cities so concerned. Any city or town council or other legislative body, may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county board adopts a master plan pursuant to Title 11, chapter 38 and accompanying zoning or subdivision resolutions or both which include the area. As a prerequisite to the exercise of this power, a *city-county planningboard whose jurisdictional area includes the area to be regulated must be formed or an existing* city planning board must be increased to include two (2) representatives from the unincorporated area which is to be affected. These representatives shall be appointed by the board of county commissioners. Such representation, however, shall cease when the county board adopts a master plan pursuant to Title 11, chapter 38 and accompanying zoning or subdivision resolutions or both which include the area.

A city or town, which has as its plan of government the commission-manager plan, shall be excluded from the provision of section 11-2702(2) which defines extraterritorial authority to review proposed subdivisions."

Approved: March 17, 1973.

CHAPTER NO. 355

An Act Requiring Counties to Levy the Same Basic Tax for Foundation Program Support and to Deposit Surplus Funds in the State Equalization Aid Account; Providing an Increased Level of State Participation in the Deficiency and Permissive Levies Funding the Maximum-Budget-Without-a-Vote of Elementary and Secondary School Districts; Providing a Limitation on School District Budget Increases; and Amending Sections 75-6912, 75-6913, 75-6916, 75-6921, 75-6922, and 75-6923, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-6912, R.C.M. 1947, is amended to read as follows:

"75-6912. **Basic county tax and other revenues for county equalization of the elementary district foundation program.** It shall be the duty of the county commissioners of each county to levy an annual basic tax of twenty-five (25) mills on the dollars of the taxable value of all taxable property within the county *for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the*

support of the foundation programs of the elementary school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner: In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsections (1) through (6) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county. If *the* basic levy of twenty-five (25) mills, *produces more revenue than is required* to finance the difference determined above, the county commissioners shall *order the county treasurer to remit the surplus funds to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.*

The proceeds realized from the *county's portion of the* levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in section 75-6914 and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with subsection (1) of section 75-6805;

(1) the portion of the federal forest reserve funds distributed to a county and designated for the common school fund under the provisions of section 79-205, R.C.M. 1947;

(2) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of section 79-702, R.C.M. 1947;

(3) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of section 79-2102, R.C.M. 1947;

(4) all moneys which are paid into the county treasury as a result of fines for violations of law and the use of which is not otherwise specified by law;

(5) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section; and

(6) any federal or state moneys distributed to the county as payment in lieu of the property taxation established by the county levy required by this section."

Section 2. Section 75-6913, R.C.M. 1947, is amended to read as follows:

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"75-6913. **Basic special levy and other revenues for county equalization of high school district foundation program.** It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of fifteen (15) mills on the dollar of the taxable value of all taxable property within the county *for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner: In order to determine the amount of revenue raised by this levy which is retained by the county,* the estimated revenues identified in subsections (1) and (2) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county. If *the* basic levy for fifteen (15) mills *produces more revenue than is required* to finance the difference determined above, the county commissioners shall *order the county treasurer to remit the surplus to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.*

The proceeds realized from the *county's portion of the* levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in section 75-6914, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with subsection (1) of section 75-6805:

(1) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for deposit of the proceeds from the levy established in this section; and

(2) any federal or state moneys distributed to the county as a payment in lieu of the property taxation established by the county levy required by this section."

Section 3. Section 75-6916, R.C.M. 1947, is amended to read as follows:

"75-6916. **Definition of and revenue for state equalization aid.** There shall be paid into the earmarked revenue fund, for state equalization aid to public schools of the state, twenty-five per cent (25%) of all moneys received from the collection of income taxes under chapter 49 of Title 84, R.C.M. 1947, and twenty-five per cent (25%) of all moneys received from the collection of corporation license taxes under chapter 15 of Title 84, R.C.M. 1947, as provided by section 84-1901, R.C.M. 1947. In

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addition to these revenues, one-half (½) of the moneys received from the treasurer of the United States as the state's shares of oil and gas royalties under the Act of Congress of February 25, 1920 shall be paid into the same earmarked revenue fund. *In addition to these revenues, the surplus revenues collected by the counties for foundation program support according to sections 75-6912 and 75-6913 shall be paid into the same earmarked revenue fund.*

As used in this Title, the term "state equalization aid" shall mean those moneys deposited in the earmarked revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program."

Section 4. Section 75-6921, R.C.M. 1947, is amended to read as follows:

"75-6921. **Additional** *state* **levy for state deficiency.** If the estimated state equalization level made under the provisions of section 75-6920 is less than one hundred per cent (100%), it shall be the duty of the *director of the department of revenue* to levy, separately for the elementary districts and the high school districts, additional taxes in such number of mills on the taxable value of all taxable property within the *state* as shall be required to complete the financing of the foundation programs of all elementary districts or all high school districts of the *state.*

The state treasurer shall keep a separate accounting of the proceeds realized from these mill levies. The superintendent *of public instruction* shall apportion the proceeds of the mill levies to the elementary districts of the *state* or the high school districts of the *state,* whichever the case may be, on the following basis:

(1) Determine the total amount required from this source of revenue by the several elementary or high school districts of the *state.*

(2) Determine the total amount of moneys available for this source of revenue.

(3) Calculate the percentage the amount determined in subsection (2) is of the amounts determined separtely in subsection (1) for all elementary or all high school districts.

(4) Mutiply each elementary district or each high school district requirement for this source of revenue by the percentage calculated in subsection (3).

When the total amount of the proceeds realized from these mill levies is greater than the requirements of all the elementary

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districts or high school districts of the *state*, whichever the case may be, the excess amount of moneys shall be retained by the *state* for reduction of the ensuing year's additional *state* levy for elementary schools or high schools *or, if there is no additional state levy under this section the excess may be transferred to the state equalization aid account for the reduction of the legislative appropriation.*

The apportionment of *state* moneys under this section shall be known as the "additional *state* levy for state deficiency" and it shall be the last source of revenue in calculating the financing of the elementary district foundation program and the high school district foundation program.

The superintendent *of public instruction* shall compute the budgeted requirement for this source of revenue for each district and shall supply the *total state* requirements for the elementary district foundation programs and the high school district foundation programs to the *director of the department of revenue* on the second Monday of August.

Section 5. Section 75-6922, R.C.M. 1947, is amended to read as follows:

"75-6922. **Permissive levy.** *(1)* Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedule in section 75-6905, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. The financing of such general fund budget amount shall be known as the "permissive levy," and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in section 75-6926, *supplemented with revenue from a levy on all the taxable property in the state.*

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding nine (9) mills on all the taxable property in the district for the purpose of funding the permissive levy requirements of the district. If the amount of revenue raised by this levy is not sufficient to fully fund the district's permissive levy requirements, the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive levy account, according to the provisions of subsection (3) of this section.

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(b) For each high school district, the county commissioners shall annually set a levy not exceeding six (6) mills on all taxable property in the district for the purpose of funding the permissive levy requirements of the district. If the amount of revenue raised by this levy is not sufficient to fully fund the district's permissive levy requirements, the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive levy account, according to the provisions of subsection (3) of this section.

(3) The director of the department of revenue shall annually set a levy on all the property of the state which will produce enough revenue to fund the permissive levy deficiency of the elementary and high school districts of the state. The proceeds of this levy shall be deposited to the earmarked revenue fund, permissive levy account, and shall be distributed to the elementary and high school districts in accordance with their entitlements as determined by the superintendent of public instruction according to the provisions of subsections (1) and (2) of this section.

Such distribution shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If sufficient revenue is not collected to completely cover the permissive levy requirement of the districts, each district will receive the same percentage of its total requirement. Surplus revenue in the permissive levy account shall be used to reduce the state levy required for the next succeeding fiscal year. Interest earned on investment of permissive levy funds shall be deposited to the earmarked revenue fund, permissive levy account, for distribution during the next succeeding fiscal year."

Section 6. Section 75-6923, R.C.M. 1947, is amended to read as follows:

"75-6923. **Additional levy for general fund and election for authorization to impose.** The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedule in section 75-6905 for any of the following purposes:

(1) building, altering, repairing or enlarging any schoolhouse of the district;

(2) furnishing additional school facilities for the district;

(3) acquisition of land for the district;

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(4) proper maintenance and operation of the school programs of the district.

However, the trustees may not adopt a total general fund budget which exceeds one hundred seven per cent (107%) of the general fund budget for the proceding year, unless such budget is adopted under conditions as provided in sections 75-6723 through 75-6730, or under the following conditions:

(a) new programs which are approved under 75-6903 or existing programs which are expanded as a result of ANB increases approved under 75-6903;

(b) federal programs which are continued with local funds if federal funds are withdrawn or withheld.

In subsection (2)(a), above, the budget may exceed 107% of the proceding year's budget by a dollar amount equal to the increase in the maximum budget without a vote resulting from the introduction of the new or expanded program and in subsection (2)(b), above, by a dollar amount not to exceed the amount received from federal sources for the preceding year. Nothing in this act shall prevent a school district from adopting a budget at least as large as the maximum budget without a vote as provided in section 75-6905.

When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified, under section 75-6410, to vote upon such proposition. Such special election shall be called and conducted in the manner prescribed by this Title for school elections. The ballot for such election shall state the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

☐ FOR the additional levy.

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☐ AGAINST the additional levy.

If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district as prescribed in section 75-6926, as are required to raise the amount of such additional levy.

Authorization to levy an additional tax under the provisions of this section shall be effective for only one school fiscal year and shall be authorized by a special election conducted before the first day of August of the school fiscal year for which it is effective. Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year."

Approved: March 17, 1973.

CHAPTER NO. 356

An Act to Regulate the Manufacture, Distribution and Use of Commercial Feed in the State of Montana by Requiring Registration with Fee of Products and Facilities; Setting Inspection Fees and Etsablishing the Method of Collection; Providing an Effective Date; and Repealing Section 3-2012 through 3-2024, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Unless the context requires otherwise, in this act:

(1) "Person" means on individual, partnership, corporation and association.

(2) "Distribute" means to offer for sale, sell, exchange or barter commercial feed.

(3) "Distributor" means a person who distributes.

(4) "Commercial feed" means all materials except the mixed or unmixed whole seeds or physically altered mixed or unmixed

entire seeds of cereal grains with or without molasses added, when not adulterated within the meaning of section 6(1), which are distributed for use as feed or for mixing in feed. However, the department by rule may exempt from this definition, or from specific provisions of this act, commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances when those commodities, compounds or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 6(1) of this act.

(5) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(6) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(7) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man and articles other than feed intended to affect the structure or function of the animal body.

(8) "Custom-mixed feed" means commercial feed which consists of a mixture of either commercial feeds or feed ingredients or both of them, each batch of which is manufactured according to specification mutually agreed to by the purchaser and the manufacturer. A copy of the specifications or a list of the ingredients, but not necessarily the percentage of each ingredient, shall be on file at the manufacturing facility.

(9) "Manufacture" means to grind, mix, blend or further process a commercial feed.

(10) "Brand name" means any word, name, symbol or device, or any combination of them identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(11) "Product name" means the name of the commercial feed which identifies it as to kind, class or specific use.

(12) "Label" means a display of written, printed or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(13) "Labeling" means all labels and other written, printed or graphic matter upon a commercial feed, any of its containers, its wrapper or accompanying the commercial feed.

(14) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.

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(15) "per cent" or "percentages" means percentages by weights.

(16) "Offical sample" means a sample of feed taken by the department in accordance with the provisions of section 11(3), (5) or (6) of this act.

(17) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

(18) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

(19) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(20) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

Section 2. This act shall be administered by the Montana department of agriculture.

Section 3. (1) No person may manufacture for distribution or distribute a commercial feed in this state unless he has obtained a permit by filing with the department, on forms provided by the department, his name, place of business, and location of manufacturing facility, distribution point, or point of invoicing. The applicant shall pay a fee of twenty-five dollars ($25) per calendar year for each facility, distribution point or point of invoicing. A permit will remain in force until the end of the calendar year for which it is issued or until canceled by the permit holder or canceled for cause by the department. No refund may be made at the time of cancellation. No transfer of permits will be made. A distributor who distributes only pet foods or specialty pet foods is exempt from this provision.

(2) No person may distribute, in this state, a commercial feed, except a custom-mixed feed, which has not been registered under this section by the manufacturer. The application for registration shall be accompanied by a fee of five dollars ($5) for each product other than a pet food or specialty pet food and a fee of twenty-five dollars ($25) each for each pet food or specialty pet food. Upon approval by the department, a certificate of registration shall be continuous, provided that the annual fee is paid not later than December 31 of each year.

(3) The department may refuse registration of any commerical feed not in compliance with this act and may cancel any registration subsequently found not to be in compliance

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with this act. No registration may be refused or canceled unless the registrant has been given an opportunity to be heard before the department and to amend his application in order to comply with this act.

Section 4. (1) A commercial feed, except a custom-mixed feed, shall be accompanied by a label containing:

(a) the net weight;

(b) the product name and any brand name under which the commercial feed is distributed;

(c) the guaranteed analysis stated in terms the department by rule determines are required to advise the user of the composition of the feed or to support claims made in the labeling. The substances or elements guaranteed must be determinable by laboratory methods such as the methods published by the association of official analytical chemists;

(d) the common or usual name of each ingredient used in the manufacture of the commercial feed. The department by rule may permit the use of a collective term for a group of ingredients which perform a similar function, or it may exempt commercial feeds, or any group of them from this requirement of an ingredient statement if it finds that the statement is not required in the interest of consumers;

(e) the name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed;

(f) adequate directions for use for all commercial feeds containing drugs. The department may by rule require directions for the use of other commercial feeds when necessary for their safe and effective use;

(g) precautionary statements which the department by rule determines are necessary for safe and effective use of the commercial feed.

(2) A custom-mixed feed shall be accompanied by a label, invoice, delivery slip, or other shipping document containing:

(a) the name and address of the manufacturer;

(b) the name and address of the purchaser;

(c) the date of delivery;

(d) the specific agreed to composition of the feed or a list of the ingredients, but not necessarily the percentage of each ingredient;

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(e) adequate directions for use for all custom-mixed feed containing drugs. The department may by rule require directions for the use of other custom-mixed feeds when necessary for their safe and effective use;

(f) precautionary statements which the department by rule determines are necessary for safe and effective use of the custom-mixed feeds.

Section 5. A commercial feed is misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is distributed under the name of another commercial feed;

(3) it is not labeled as required in section 4 of this act;

(4) it purports to be or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to any definition prescribed by rule of the department;

(5) any word, statement, or other information required by this act to appear on the label is not prominently placed there with a conspicuousness (as compared with other words, statements, designs or devices in the labeling) and in terms which render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Section 6. (1) A commercial feed is adulterated if:

(a) it contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not added substance, the commercial feed shall not be considered adulterated under this subsection if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health;

(b) it contains any added poisonous, deleterious or nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is a pesticide chemical in or on a raw agricultural commidity or a food additive;)

(c) it is, or it contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

(d) it is a raw agricultural commodity and it contains a pesticide chemical which is unsafe within the meaning of section 408 (a) of the Federal Food, Drug, and Cosmetic Act. How-

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ever, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and that agricultural commodity has been processed by canning, cooking, freezing, dehydrating or milling, the residue of the pesticide chemical remaining in or on the processed feed shall not be deemed unsafe if such residue in or on the raw agrciultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of the processed feed is likely to result in the pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408 (a) of the Federal Food, Drug, and Cosmetic Act;

(e) it is, or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act.

(2) Any valuable constituents have been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(3) Its composition or quality falls below or differs from that stated on its label.

(4) It contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice rules adopted by the department to assure that the drug meets the requirement of this act as to safety and has the identity and strength and meets the quality and purity characteristics which it is represented to possess. In formulating these rules, the department shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under the Federal Food, Drug, and Cosmetic Act, unless it determines that they are not appropriate to the conditions which exist in this state.

(5) It contains viable weed seeds in amounts exceeding the limits which the department established by rule.

Section 7. No person may:

(1) manufacture or distribute any commercial feed that is adulterated or misbranded;

(2) adulterate or misbrand a commercial feed;

(3) distribute agricultural commodities such as whole seed,

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hay, straw, stover, silage, cobs, husks, and hulls which are adulterated within the meaning of section 6(1) of this act;

(4) remove or dispose of a commercial feed in violation of an order under section 12 of this act;

(5) fail to register or obtain a permit in accordance with section 3 of this act;

(6) violate section 13(6) of this act;

(7) fail to pay inspection fees and file reports as required by section 8 of this act.

Section 8. (1) An inspection fee shall be paid on all commercial feeds, except "pet foods" and "specialty pet foods" distributed in this state as follows:

(a) The inspection fee shall be set at ten cents ($.10) per ton. However, after May 1975 the department may adjust the fee by rule to adequately fund the administration of this act. Adjustments shall be made only after holding a public hearing on the proposed changes as required in section 10 of this act and shall remain within the limits of five cents ($.5) to twenty-five cents ($.25) per ton. The effective date of any such rule adjusting fees will be January 1 of the calendar year following the issuance of such rule. All permit holders are to be notified immediately of any changes in fees.

(b) The feed manufacturer shall have primary responsibility for paying inspection fees; however, the distributor shall be held responsible for inspection fees if the manufacturer has not paid them.

(c) Inspection fees shall be paid on each commercial feed including feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant are exempt but not premixes or ingredients transferred from one plant to another even within the same organization.

(d) A person producing a commercial feed with a feed mixing plant at a feed lot, poultry, swine or dairy operation shall not be required to pay inspection fees on the commercial feeds produced and used in his feeding operation at the site but he will be responsible for any unpaid inspection fees on commercial feed purchased by him and on any commercial feed he produces and distributes other than in his feeding operations at the site.

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(2) Each person who holds a permit as required in section 3(1) of this act shall:

(a) file, not later than February 28 of each year, an anual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year (January 1 through December 31); and upon filing such a statement shall pay the inspection fee at the rate stated in subsection (1) of this section. Inspection fees which have not been remitted to the department within fifteen (15) days following the due date shall have a penalty fee of ten per cent (10%) with a minimum of ten dollars ($10) added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this act;

(b) keep those records which are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage;

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a permit.

Section 9. All fees collected for permits, registration and inspection shall be deposited in the state treasury to the credit of the earmarked revenue fund for the purpose of administering this act, including the cost of equipment and facilities and the cost of inspecting, analyzing and examining commercial feeds manufactured or distributed in this state and the cost of developing better analytical methods, means of evaluating the value or the potential toxic qualities of a feed.

Section 10. (1) The department may adopt those rules for commercial feeds and pet foods which are specifically authorized in this act and those other reasonable rules necessary for the efficient enforcement of this act. In the interest of uniformity the department shall adopt unless it determines that they are inconsistent with this act or are not appropriate to conditions which exist in this state:

(a) the official definitions of feed ingredients and official feed terms adopted by the association of American feed control officials and published in this official publication of that organization and,

(b) any rules adopted under the Federal Food, Drug, and Cosmetic Act as long as the department has the authority under this act to adopt that rule.

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(2) In adopting rules the department will follow procedures prescribed in the Montana Administrative Procedure Act.

Section 11. (1) To enforce this act, the department, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge may (1) enter, during normal business hours, any factory, warehouse or establishment within the state in which commercial feeds are manufactured, processed, packed or held, or enter any vehicle being used to transport or hold commercial feeds. The department may inspect at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishments or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling found in them. The inspection may include the verification of only those records and production and control procedures necessary to determine compliance with the good manufacturing practice rules adopted under section 6(4) of this act.

(2) A separate notice shall be given for each inspection, but a notice is not required for each entry made during the period covered by the inspection. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(3) If the officer or employee making the inspection of a factory, warehouse or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give the owner, operator or agent in charge a receipt describing the sample obtained.

(4) If the owner of a factory, warehouse or establishment described in subsection (1), or his agent, refuses to allow an inspection, the department may obtain from the district court a warrant directing the owner or his agent to allow inspection of the premises described in the warrant.

(5) To enforce this act, the department may enter upon any public or private premises including any vehicle of transport during regular business hours to obtain samples and examine records relating to distribution of commercial feeds.

(6) Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists or with other generally recognized methods.

(7) The results of all analyses of official samples shall be forwarded by the department to the person named on the

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label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty (30) days following receipt of the analysis the department shall furnish the registrant a portion of the sample.

(8) The department, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in subsection (16) of section 1 and obtained and analyzed as provided for in subsection (3), (5) and (6) of section 11 of this act.

(9) All chemical analyses shall be performed cooperatively by the department and the Montana agricultural experiment station at Montana state university.

Section 12. (1) When the department has reasonable cause to believe any lot of commercial feed is in violation of this act or a rule adopted by the department, it may issue and enforce a written or printed embargo order, requiring the person holding the commercial feed not to dispose of it in any manner until written permission is given by the department or the court. The department shall release the feed when this act and the rules of the department have been complied with. If compliance is not obtained within thirty (30) days, the department may begin or upon the request of the registrant or the person holding the commercial feed shall begin, proceedings for condemnation.

(2) Commercial feed not in compliance with this act or the rules of the department may be seized on complaint of the department to a district court in the area in which the commercial feed is located. If the court finds the commercial feed in violation of this act and orders its condemnation, it shall be disposed of in any manner consistent with the quality of the commercial feed and state law. The disposition of the commercial feed may not be ordered by the court without first giving the owner or person from whom the feed was seized an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this act.

Section 13. (1) A person who violates this act or who obstructs, prevents or attempts to obstruct or prevent the department in the performance of its duty under this act, is guilty of a misdemeanor and shall be fined not less than one hundred dollars ($100) or more than three hundred dollars ($300) for the first violation, and not less than five hundred dollars ($500)

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nor more than one thousand dollars ($1,000) for a subsequent violation.

(2) Nothing in this act requires the department to prosecute, begin seizure proceedings or issue an embargo order as a result of minor violations or when it believes the public interest will best be served by suitable notice of warning in writing.

(3) A county attorney to whom a violation is reported shall prosecute in a court of competent jurisdiction without delay. Before the department reports a violation for prosecution, an opportunity shall be given the distributor to present his view to the department.

(4) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating this act or any rule adopted under this act notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(5) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this act may within thirty (30) days seek judicial review in the district court where the person resides or has his place of business.

(6) A person who uses to his own advantage, or reveals to persons other than officers of the department or to the courts when relevant in a judicial proceeding, any information acquired under this act, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a misdemeanor and shall be fined not more than three hundred dollars ($300), or imprisoned for not more than one (1) year, or both. However, the department may exchange information of a regulatory nature with the proper officials of the United States government, or of other states, who are similarly prohibited by law from revealing that information.

Section 14. The department may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government and private associations in order to carry out this act.

Section 15. The department shall publish at least annually in a form it considers proper, information concerning the sale of commercial feed, data on production and use and the results of analysis of official samples of commercial feeds sold within the state as compared with the analysis guaranteed in the registration and on the label. The information concerning production

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and use of commercial feed shall not disclose the operations of any person.

Section 16. If any clause, sentence, paragraph or part of this act is for any reason judged invalid by a court of competent jurisdiction, that judgment does not affect, impair or invalidate the remainder thereof but is confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which the judgment is rendered.

Section 17. Sections 3-2012 through 3-2024, R.C.M. 1947, are repealed.

Section 18. This act shall take effect and be in full force from and after the first day of January 1, 1974, except the department may and is hereby directed to adopt necessary rules as authorized in section 10 of this act as soon as practical so they can become effective January 1, 1974.

Approved: March 17, 1973.

CHAPTER NO. 357

An Act Requiring Montana Colleges and Universities to Develop Procedures to Protect a Student's Right to Privacy Concerning His Place of Residence and His College or University Records.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities which are necessary to protect the health, safety and privacy of a person's residence and the privacy of his records. Intrusions by police and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions. Further, a student may not be subjected to discrimination in the manner of covert records.

Section 2. A university or college facility may not require a student to sign any contract which would waive his or her right to privacy and due process of law.

Section 3. An authorized official of the university or college may not enter the room of a student located at such insti-

tution unless he has given the student in writing a notice. An emergency such as a fire or a call for help, or where there is probable cause to believe the occupant needs assistance is the only exception to the written notice requirement. In such an emergency evidence of crime obtained as a result of such emergency entry shall not be admissible in any court of law unless due process of law has been satisfied in obtaining such evidence.

Section 4. A search or entry by any law enforcement official shall be in accordance with the laws of the city, county, state and nation.

Section 5. A university or college shall release a student's academic record only when requested by the student or by a subpoena issued by a court or tribunal of competent jurisdiction. A student's written permission must be obtained before the university or college may release any other kind of record unless such record shall have been subpoenaed by a court or tribunal of competent jurisdiction.

Section 6. Academic records shall be kept separate from disciplinary and all other records. Academic transcripts shall contain only information of academic nature. A student shall have the right to examine all written summaries, descriptions, statements or reports of academic or disciplinary nature which may have been compiled upon him or her.

Approved: March 17, 1973.

CHAPTER NO. 358

An Act Amending Sections 82A-101 through 82A-112 and 82A-115 through 82A-122, R.C.M. 1947, Relating to the General Provisions Contained in the First Chapter of the Executive Reorganization Act of 1971; and Repealing Sections 82A-113, 82A-114 and 82A-123, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82A-101, R.C.M. 1947, is amended to read as follows:

"82A-101. **Short title.** This *title* shall be known and may be cited as the "Executive Reorganization Act." "

Section 2. Section 82A-102, R.C.M. 1947, is amended to read as follows:

"82A-102. **Declaration of policy and purpose.** (1) The purpose of this *title* is to comply with *article VI, section 7, of the*

Montana constitution which requires that *all* executive and administrative offices, boards, *bureaus,* commissions, agencies and instrumentalities of the executive *branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor)* and their respective functions, powers, and duties, shall be allocated by law among not more than twenty *(20) principal* departments *so as to provide an orderly arrangement in the administrative organization of state government.*

(2) It is the public policy of this state and the purpose of this *title* to create a structure of the executive *branch* of state government which is responsive to the needs of the people of this state and sufficiently flexible to meet changing conditions; to strengthen the executive capacity to administer effectively and efficiently at all levels; to encourage greater public participation in state government; to effect the grouping of state agencies into a reasonable number of departments primarily according to function; to provide that the responsibility within the executive *branch* of state government for the implementation of programs and policies is clearly fixed and ascertainable; and to eliminate overlapping and duplication of effort within the executive *branch* of state government."

Section 3. Section 82A-103, R.C.M. 1947, is amended to read as follows:

"82A-103. **Definitions.** As used in this *title*: (1) "Executive *branch*" means the executive *branch* of state government referred to in the Montana constitution, articles *III* and *VI.*

(2) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive *branch* of state government.

(3) "Unit" means an internal subdivision of an agency, created by law or by administrative action, including a division, bureau, section, or department, and an agency allocated to a department for administrative purposes only by this *title.*

(4) "Department" means a principal functional and administrative entity, created by this *title,* within the executive *branch* of state government; is one of the twenty (20) principal departments permitted under the *constitution*; and includes its units.

(5) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department created by this *title.*

(6) "Director" means a department head specifically referred to as a director in this *title,* and does not mean a commission, board, commissioner, or constitutional officer.

(7) "Advisory capacity" means furnishing advice, gathering information, making recommendations, and performing such other activities as may be necessary to comply with federal funding requirements, and does not mean administering a program or function or setting policy.

(8) "Function" means a duty, power, or program, exercised by or assigned to an agency, whether or not specifically provided for by law.

(9) "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes, but is not limited to, the functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; issuing, suspending, or revoking licenses, permits, and certificates; determining rights and interests of adverse parties; evaluating and passing on facts; awarding compensation; fixing prices; ordering action or abatement of action; adopting procedural rules; holding hearings; and any other act necessary to the performance of a quasi-judicial function.

(10) "Quasi-legislative function" generally means making or having the power to make rules or set rates and all other acts connected with or essential to the proper exercise of a quasi-legislative function.

Section 4. Section 82A-104, R.C.M. 1947, is amended to read as follows:

"82A-104. **Structure of executive** *branch* **of state government.** (1) In accordance with the *constitution,* all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive *branch* of state government, and their respective functions, are allocated by this *title* among and within the following departments created by this *title*:

(a) Department of administration.

(b) Department of agriculture.

(c) Department of business regulation.

(d) Department of education.

(e) Department of fish and game.

(f) Department of health and environmental sciences.

(g) Department of highways.

(h) Department of institutions.

(i) Department of intergovernmental relations.

(j) Department of labor and industry.

(k) Department of law enforcement and public safety.

(l) Department of livestock.

(m) Department of military affairs.

(n) Department of natural resources and conservation.

(o) Department of professional and occupational licensing.

(p) Department of public service regulation.

(q) Department of revenue.

(r) Department of social and rehabilitation services.

(s) Department of *state lands.*

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a "division." Each division shall be headed by an "administrator."

(b) The principal unit of a division is a "bureau." Each bureau shall be headed by a "chief."

(c) The principal unit of a bureau is a "section." Each section shall be headed by a "supervisor." "

Section 5. Section 82A-105, R.C.M. 1947, is amended to read as follows:

"82A-105. **Policy-making authority and administrative powers of governor.** In accordance with article *VI,* section *4* of the Montana constitution, the governor is the chief executive officer of the state. Subject to the constitution and law of this state, the governor shall formulate and administer the policies of the executive *branch* of state government. In the execution of these policies, the governor has full powers of supervision, approval, direction, and appointment over all departments and their units, other than the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, except as otherwise provided by law. Whenever a conflict arises as to the administration of the policies of the executive *branch* of state government, except for conflicts arising in the office of the lieutenant

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governor, secretary of state, attorney general, auditor, and superintendent of public instruction, the governor shall resolve the conflict, and the decision of the governor is final."

Section 6. Section 82A-106, R.C.M. 1947, is amended to read as follows:

"82A-106. **Appointment and qualifications of department heads.** (1) The governor shall appoint *at the beginning of each gubernatorial term* each department head who is a director in this *title.*"

(2) An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office, and is a dejure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a director, the governor shall make a new appointment.

(3) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.

(4) The governor shall select a director on the basis of his professional and administrative knowledge and experience and such additional qualifications as are provided by law.

(5) If a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.

(6) Heads of departments who are not directors shall be elected or appointed and serve, and their vacancies filled, as provided by law."

Section 7. Section 82A-107, R.C.M. 1947, is amended to read as follows:

"82A-107. **Duties and powers of department heads.** (1) Except as otherwise provided *by law,* each department head shall: shall:

(a) Supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this *title* or other law.

(b) Establish the policy to be followed by the department and employees.

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(c) Compile and submit reports and budgets for the department as required by law or requested by the governor.

(d) Provide the governor with any information that he requests at any time on the operation of the department.

(e) Represent the department in communications with the governor.

(f) Prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices and the governor may not prescribe rules for them.

(g) *Subject to the approval of the governor, establish* the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department shall be established in accordance with section *82A-104(2)*.

(h) Subject to law, and the state merit system if applicable, establish and make appointments to necessary subordinate positions, and abolish unnecessary positions.

(i) Maintain a central office in Helena for the department, and such other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided *by law,* each department head may:

(a) Subject to law, and the state merit system if applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department.

(b) Delegate any of the functions vested in the department head to subordinate employees.

(c) Apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions.

(d) Enter into agreements with federal, state, and local agencies necessary to carry out the department's functions."

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Section 8. Section 82A-108, R.C.M. 1947, is amended to read as follows:

"82A-108. **Allocation for administrative purposes only.** (1) An agency allocated to a department for administrative purposes only in this *title shall:*

(a) Exercise its quasi-judicial, quasi-legislative, licensing, and policy-making functions independently of the department and without approval or control of the department.

(b) Submit its budgetary requests through the department.

(c) Submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this *title* shall:

(a) Direct and supervise the budgeting, record keeping, reporting, and related administrative and clerical functions of the agency.

(b) Include the agency's budgetary requests in the departmental budget.

(c) Collect all revenues for the agency and deposit them in the proper fund or account; except as provided in section 82A-1603(6), the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) Provide staff for the agency. Unless otherwise indicated in this *title,* the agency may not hire its own personnel.

(e) Print and disseminate for the agency any required notices, rules, or orders adopted, amended, or repealed by the agency.

(3) The department head of a department to which any agency is allocated for administrative purposes only in this *title* shall:

(a) Represent the agency in communications with the governor.

(b) Allocate office space to the agency as necessary, subject to the approval of the department of administration."

Section 9. Section 82A-109, R.C.M. 1947, is amended to read as follows:

"82A-109. **Prior right of department head to agencies and records.** Each department head designated by this *title* or appointed by the governor has, before assuming the office of the

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department head, full access to all agencies and their records within the department created by this *title* for the purpose of formulating plans for internal organization and the fiscal and personnel administration of the department."

Section 10. Section 82A-110, R.C.M. 1947, is amended to read as follows:

"82A-110. **Creation of advisory councils.** (1) A department head or the governor may create advisory councils. An official of the executive *branch* of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, or an agency, may also create advisory councils, but only if federal law or regulation requires that such official or agency create the advisory council as a condition to the receipt of federal funds.

(2) Each advisory council created under this section shall be known as the ". . . . advisory council."

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall serve at the pleasure of the governor; and specifiy a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in section *82A-103(7)*.

(5) *Unless* he is a full-time salaried officer or employee of this state *or of any political subdivision of this state,* each member is entitled to be paid in an amount to be determined by the department head, not to exceed twenty-five dollars ($25) for each day in which he is actually and necessarily engaged in the performance of council duties, and *he is* also *entitled to* be reimbursed for actual and necessary expenses incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state *or of any political subdivision of this state are* not *entitled to* be compensated for their service as members, but *are entitled to* be reimbursed for their *actual and necessary* expenses.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor, and may meet at other times on the call of the chairman or a majority

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of its members. *An* advisory council may *not* meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (10) of this section, *an* advisory council may *not* be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor must file in his office and in the office of the secretary of state a record of the council created showing the council's:

(a) Name, in accordnce with subsection (2) of this section.

(b) Composition.

(c) Names and addresses of the appointed members.

(d) Purpose.

(e) Term of existence, in accordance with subsection (11) of this section.

(10) The board of education, the attorney general, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) of this section.

(11) *An* advisory council may *not* be created to remain in existence longer than two (2) years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor, or by the board of education, the attorney general, or the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (10) of this section. If the existence of an advisory council is extended, they shall specifiy a new date, not more than two (2) years later, when the existence of the advisory council ends, and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary."

Section 11. Section 82A-111, R.C.M. 1947, is amended to read as follows:

"82A-111. **Administratively created agencies — prohibition.**

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The governor, a department head, or any other official of the executive *branch* of state government, or an agency, may not, by administrative action, create or attempt to create an agency of state government. This section does not apply to:

(1) Advisory councils created in accordance with section 82A-110.

(2) Units within the internal structure of a department established under section 82A-107(g)."

Section 12. Section 82A-112, R.C.M. 1947, is amended to read as follows:

"82A-112. **Quasi-judicial boards.** If an agency is designated *by law* as a quasi-judicial board *for the purposes of this section:*

(1) The number of and qualifications *of its members* are as *prescribed by law;* in addition to those qualifications, at least one (1) member shall be an attorney licensed to practice law in *this* state.

(2)(a) The governor shall appoint the members. *A majority of the members shall be appointed to* serve for terms concurrent with the *gubernatorial term,* and until their successors are appointed and qualified. *The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term, and until their successors are appointed and qualified.* It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term, *and* the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number *greater* than half.

(b) This subsection does not affect the terms of persons who were members of a continued board on the effective date of the chapter of this title continuing the board; upon the expiration of those terms, members shall be appointed and serve in accordance with this subsection.

(3) The appointment of each member is subject to the confirmation of the senate. However, the governor may appoint a member to assume office before the senate meets at its next regular session to consider the appointment. A member so appointed has all the powers of the office upon assuming that office, and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular

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appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. *The chairman may make and second motions and vote.*

(6) Members may be removed by the governor only for cause.

(7) Unless he is a full-time salaried officer or employee of this state *or of a political subdivision of this state, each member is entitled to* be paid twenty-five dollars ($25) for each day in which he is actually and necessarily engaged in the performance of board duties, and *he is* also *entitled to* be reimbursed for actual and necessary expenses incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state *or of a political subdivision of this state are* not *entitled to* be compensated for their service as members, but *are entitled to* be reimbursed for their *actual and necessary* expenses.

(8) A majority of the membership constitutes a quorum to do business. *A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law.''*

Section 13. Section 82A-115, R.C.M. 1947, is amended to read as follows:

"82A-115. **Future** *agencies and* **functions.** If an agency or a function is not allocated or transferred to a department or a constitutional office by this *title* or any other act of the *legislature,* the governor shall, by executive order, allocate that agency *for administrative purposes only* or function to the appropriate principal department or *constitutional office. The governor shall transmit copies of all executive orders issued under this section to the legislature at its next regular session.''*

Section 14. Section 82A-116, R.C.M. 1947, is amended to read as follows:

"82A-116. **Rights of state personnel.** Unless otherwise provided in this act, each state officer or employee affected by the reorganization of the executive *branch* of state government under this *title* is entitled to all rights which he possessed as a state officer or employee before the effective date of the applicable chapter of this *title,* including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy. This section is not intended to create any new rights

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for any state officer or employee, but to continue only those rights in effect before the effective date of the applicable chapter of this *title or an amendment to this title.*"

Section 15. Section 82A-117, R.C.M. 1947, is amended to read as follows:

"82A-117. **Rights to property.** The department or unit thereof that succeeds to all or part of the functions of an agency under this *title* also succeeds to the rights to all real and personal property of that agency relating to the functions or parts of functions transferred. The property includes real property, records, office equipment, supplies, contracts, books, papers, documents, maps, appropriations, accounts within and without the state treasury, funds, vehicles, and all other similar property. However, the department or unit may not use or divert moneys in a fund or account for a purpose other than provided by law. The governor shall resolve any conflict as to the proper disposition of the property, and his decision is final. This section does not apply to property owned by the federal government."

Section 16. Section 82A-118, R.C.M. 1947, is amended to read as follows:

"82A-118. **Rules, regulations, and orders.** The department or unit thereof that succeeds to all or part of the functions of an agency under this *title* also succeeds to the rules, regulations, and orders of that agency relating to the functions or parts of functions transferred. The rules, regulations, and orders of any agency in effect before the effective date of the *transfer* remain in effect until amended, repealed, superseded, or nullified by proper authority or by law."

Section 17. Section 82A-119, R.C.M. 1947, is amended to read as follows:

82A-119. **Legal proceedings.** *The transfer or abolition of an agency or function under this title* does not affect the validity of any judicial or administrative proceeding pending or which could have been commenced before the effective date of the *transfer or abolition,* and the department or unit which succeeds to the functions of an agency relating to the proceeding shall be substituted as a party in interest."

Section 18. Section 82A-120, R.C.M. 1947, is amended to read as follows:

"82A-120. **Rights and duties under existing transactions.** The rights, privileges, and duties of the holders of bonds and other obligations issued, and of the parties to contracts, leases,

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indentures, and other transactions entered into, before the effective date of the *transfer of functions under* this *title,* by the state or by any agency, officer, or employee thereof, and covenants and agreements as set forth therein, remain in effect, and none of those rights, privileges, duties, covenants, or agreements is impaired or diminished by reason of the transfer of the functions of an agency or the abolition of an agency *under* this *title.* The department or unit which succeeds to the functions of an agency is substituted for that agency and succeeds to its rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions."

Section 19. Section 82A-121, R.C.M. 1947, is amended to read as follows:

"82A-121. **References.** *Unless inconsistent with this title, if an agency is abolished under this title, or if a function of an agency is transferred to another agency, references to the abolished agency or to the agency whose functions were transeferred in any law, contract, or other document shall apply to the agency which succeeds to the functions which were transferred."*

Section 20. Section 82A-122, R.C.M. 1947, is amended to read as follows:

"82A-122. **Federal aid.** If any part of this *title* is ruled to be in conflict with federal requirements which are a prescribed condition to the receipt of federal aid by the state, an agency, or a political subdivision, that part of this *title* has no effect, and the governor may issue an executive order which substitutes for that part to the extent necessary to effectuate the receipt of federal aid. The order is effective until the legislative assembly again acts upon the matter."

Section 21. Sections 82A-113, 82A-114 and 82A-123, R.C.M. 1947, are repealed.

Approved: March 17, 1973.

CHAPTER NO. 359

An Act to Allow the Qualified Electors of Any City or Town in the State to Adopt a Strong Mayor Form of Municipal Government; Creating a New Section to be Numbered 11-802.1; and Partially Implementing Article XI, Section 3 of the Mon-Montana Constitution of 1972.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section 11-802.1 which reads as follows:

11-802.1. Strong mayor form of government authorized. (1) The qualified electors of any city or town in this state may, in the manner provided in title 11, chapter 11, cause an ordinance to be adopted which has as its subject the vesting of any or all of the following powers with the office of mayor of such city or town:

(a) To appoint and remove, without consent of the council, all nonelective officers of the city or town.

(b) To exercise absolute control over all departments and divisions of the city or town created in this title, or that may be created by the council.

(c) To appoint one (1) or more administrative assistants to assist him in the direction of the operations of the various city departments and agencies. The administrative assistants shall be answerable solely to the mayor.

(d) To be solely responsible for the preparation of the annual budget in compliance with the procedures set forth in chapter 14 of this title.

(e) To appoint a budget and finance director whose functions shall include the preparation of the annual municipal budget under the direction of the mayor. The budget and finance director shall be answerable solely to the mayor and shall serve at his pleasure.

(2) If any ordinance duly adopted in accordance with this section is in conflict with sections 11-801 or 11-802 above, the provisions of this section shall prevail.

Approved: March 19, 1973.

CHAPTER NO. 360

An Act to Amend Section 59-1001, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 59-1001, R.C.M. 1947, is amended to read as follows:

"59-1001. **Annual vacation leave.** (1) Each employee of the state, or any county or city thereof, who is in continuous employment and service of the state, county or city thereof, is entitled

to and shall earn annual vacation leave credit from the first full calendar month of employment. However, employees are not entitled to any leave with full pay until they have worked continuously for a period of twelve (12) calendar months. Vacation credits shall be earned in accordance with the following schedule:

(a) from *the first full pay period* through ten (10) years of employment at the rate of one and one-quarter (1¼) working days for each month of service;

(b) from eleven (11) years through fifteen (15) years of emplyment at the rate of one and one-half (1½) working days for each month of service;

(c) from sixteen (16) years through twenty (20) years of employment at the rate of one and three-fourths (1¾) working days for each month of service;

(d) after twenty (20) years of employment at the rate of two (2) working days for each month of service.

(2) It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of this law. Should a question arise under this paragraph, it shall be submitted to arbitration as provided in chapter 201, title 93, R.C.M. 1947, unless there is a collective bargaining agreement applicable."

Approved: March 19, 1973.

CHAPTER NO. 361

An Act Providing for Exemption from Property Taxation for all Perishable Fruits and Vegetables in Farm Storage; Amending Sections 84-202 and 84-301, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-202, R.C.M. 1947, is amended to read as follows:

"84-202. **Exemptions from taxation.** The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, *all unprocessed, perishable fruits and vegetables in farm storage and owned by the producer,* such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public

charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; provided, the term "institutions of purely public charity" as used in this act shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only, and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability."

Section 2. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. **Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks,

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musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1¼) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those

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within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this subsection (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, *except all perishable fruits and vegetables in farm storage and owned by the producer,* and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state board of equalization, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so

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as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state board of equalization in such manner and form as may be required by said board.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit before the county assessor of the county in which said property is located, on a form as may be provided by the state board of equalization supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class.

Class Nine. Freeport merchandise. Freeport merchandise means those stocks of merchandise manufactured or produced

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outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state board of equalization in such manner or form as may be required by said board.

The state board of equalization shall establish standards, rules and regulations for the guidance of county assessors and assessing freeport merchandise.

Class Ten. All property not included in the nine (9) preceding classes."

Approved: March 19, 1973.

CHAPTER NO. 362

An Act Amending Section 75-7013, R.C.M. 1947, to Provide School Trustees an Alternative Method to Let School Bus Transportation Contracts, and Provide an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7013, R.C.M. 1947, is amended to read as follows:

"75-7013. **Bid letting for contract bus and payments under any transportation contract.** Before any contract with a private party for the provision of school bus transportation is awarded, the trustees shall:

(1) secure bids by publishing at least three (3) calls for bids in a newspaper of the county that will give notice to the largest number of people of the district or in the official newspaper of the county during a period of twenty-one (21) days. The trustees shall let the contract to the lowest responsible bidder and the trustees shall have the right to reject any and all bids*; or*

(2) negotiate a new contract with the current school bus contractor provided the negotiated contract costs do not exceed by

more than five per cent (5%) per year the basic costs of the previous year's contract and provided the duration of the negotiated contract is no longer than the duration of the previous contract. Such a negotiated contract can be entered into only at a public meeting of the trustees at which meeting the patrons of the district may appear and be heard. Notice of the meeting must have been published in a newspaper of wide circulation within the district at least one week prior to the meeting.

The provisions of this section for awarding a contract for school bus transportation shall be subject to the provisions of section 75-6808.

The trustees shall not expend any moneys of the district for school bus transportation by a private party or for individual transportation unless:

(1) a contract for such transportation services has been completed; and

(2) such contracted services for school bus transportation by a private party have been actually furnished except that the failure to perform may be excused by the trustees for reasons not under the control of the contractor; or

(3) such contracted services for individual transportation have been actually furnished as conformed by the actual attendance of school by the eligible transportees and recorded on the school attendance records or, in the case of a supervised correspondence course or supervised home study, as confirmed by the trustees; except that the contracted services furnished one way on any school day shall be reimbursed at one-half (½) the daily contract amount."

Section 2. This act is effective on its passage and approval.

Approved: March 19, 1973.

CHAPTER NO. 363

An Act to Amend Sections 41-2303, 41-2306 and 41-2307, R.C.M. 1947, to Provide that Employees' Minimum Wage Shall be Exclusive of Gratutities; to Provide for Further Protection to Employees; and to Define the Application of the Fair Labor Standards Act; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 41-2303, R.C.M. 1947, is amended to read as follows:

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"41-2303. **Compensation.** (a) Except as may otherwise be provided pursuant to this act, every employer shall pay to each of his employees wages at a rate not less than one dollar sixty cents ($1.60) an hour, save and except for farm workers as herein defined and students employed at an amusement or recreational establishment that operates on a seasonal basis, who shall be compensated at not less than the following rates, *exclusive of gratutities:*

(1) one dollar twenty cents ($1.20) an hour for the first year from the effective date of this act.

(2) one dollar forty cents ($1.40) cents an hour for the second year from the effective date of this act.

(3) one dollar sixty cents ($1.60) an hour for the third year from the effective date of this act and thereafter.

(b) No employer shall employ any of his employees for a work week longer than forty (40) hours, unless such employee receives compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half (1½) times the hourly wage rate at which he is employed. No overtime provision shall apply for farm workers. Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish said students with board, lodging or other facilities shall not employ said students for a work week longer than forty-eight (48) hours, unless such students receive compensation for their employment in excess of forty-eight (48) hours in a work week at a rate of not less than one and one-half (1½) times the hourly wage rate at which they are employed.

(c) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of eight hours per day and other seasonal periods requiring working hours substantially less than eight hours per day the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to: (1) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him. The total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked, or (2) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than the following rates:

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(a) two hundred eighty dollars ($280) a month for the first year from the effective date of this act,

(b) three hundred twenty-five dollars ($325) a month for the second year from the effective date of this act,

(c) three hundred seventy-five dollars ($375) a month for the third year from the effective date of this act."

Section 2. Section 41-2306, R.C.M. 1947, is amended to read as follows:

"41-2306. **Enforcement.** Enforcement of this act shall be treated as a wage claim action and shall be in accordance with sections 41-1301 through 41-1324, R.C.M. 1947, as amended. *The commissioner may enforce this act without the necessity of a wage assignment.*"

Section 3. Section 41-2307, R.C.M. 1947, is amended to read as follows:

"41-2307. **Provisions cumulative.** The provisions of this act shall be in addition to other provisions now provided by law for the payment and collection of wages and salaries, but shall not apply to employees covered by the Fair Labor Standards Act."

Section 4. This act shall become effective on January 1, 1974.

Approved: March 19, 1973.

CHAPTER NO. 364

An Act to Amend Section 26-104, R.C.M. 1947; Deleting Statutory Requirements as to Locations for Drawings for Special Elk Permits; and Providing That Drawings are to be Conducted as Prescribed by the Fish and Game Commission.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 26-104, R.C.M. 1947, is amended to read as follows:

"26-104. **Powers and duties of commission.** (1) The commission hereby created shall have supervision over all the wildlife, fish, game, and nongame birds, and waterfowl, and the game, and fur-bearing animals of the state, and shall possess all powers necessary to fulfill the duties prescribed by law with respect thereto, and to bring actions in the proper courts of this state for the enforcement of the fish and game laws of the state, and the

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orders, rules and regulations adopted and promulgated by the commission.

(2) It shall have full power and authority to enforce all the laws of the state of Montana, respecting the protection, preservation and propagation of fish, game, and fur-bearing animals, game and nongame birds, within the state.

(3) It shall have the exclusive power to expend for the protection, preservation and propagation of fish, game, and fur-bearing animals, and game and nongame birds, all funds of the state of Montana collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise, all sums collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from appropriations, or received by the commission from any other sources are hereby appropriated to and placed under control of the Montana fish and game commission.

(4) It shall have power to discharge any appointee or employee of such commission for cause at any time.

(5) It shall have full power and authority to dispose of all property owned by the state of Montana, used for the protection, preservation and propagation of fish, game, and fur-bearing animals, and game and nongame birds, which shall have been found to be of no further value or use to the state, and shall turn over proceeds arising therefrom to the state treasurer to be by him credited to the state fish and game fund.

(6) It shall have full power and authority to use so much of the fish and game funds of the state as may be necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries, game farms or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals, or game or nongame birds in the state of Montana, and it shall have the authority to appropriate moneys from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game, or fur-bearing animals, or game or nongame birds.

(7) It shall have authority to provide for the importation of game birds and game and fur-bearing animals, and for the protection, propagation, and distribution of such imported or native birds and animals.

(8) It shall have authority to spend so much of the state fish and game funds as may be necessary to introduce and propa-

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gate wild waterfowl food and for that purpose may secure expert advice as to what kinds of waterfowl foods are adapted to the climate, soil, and waters of this state.

(9) It shall be its duty to furnish plans for, and to direct and compel the construction and installation and repair of fish ladders upon dams and other obstructions in streams, which, however, shall be installed and maintained at the expense of the owners of said dam or other obstruction.

(10) It shall have the authority to purchase and maintain at the expense of the state fish and game fund suitable fish screens or fish wheels, or other devices, to install in irrigating ditches to prevent fish entering said ditches.

(11) It shall have authority to locate, lay out, construct and maintain nurseries and rearing ponds where fry can be planted, propagated and reared and when of suitable sizes, liberated and distributed in the waters of this state, and may expend from the state fish and game funds such sums as may be necessary for this purpose.

(12) It shall have authority to acquire by gift, purchase, capture, or otherwise, any fish, game, game birds, or animals, for propagation, experimental or scientific purposes.

(13) It shall have authority to acquire by purchase, condemnation, lease, agreement, gift, or devise, or to acquire easements upon, lands or waters suitable for the purposes hereinafter enumerated, and develop, operate and maintain the same for said purposes: (a) For fish hatcheries, nursery ponds, or game farms; (b) Lands or waters suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection; (c) For public hunting, fishing, or trapping areas to provide places where the public may hunt, trap, or fish in accordance with the provisions of law or the regulations of the commission; (d) To extend and consolidate by exchange lands or waters suitable for the above purposes; (e) To capture, propagate, transport, buy, sell, or exchange any species of game, bird, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes, or to exercise control measures of undesirable species. It shall further have full authority to dispose of lands and waters acquired by it on such terms after such public notice, and without regard to other laws of this state which provide for sale or disposal of state lands, and with or without reservation, as it deems necessary and advisable, provided that notice of sale describing the lands or waters to be disposed of shall be published once a week for three (3) successive weeks in a newspaper with general circulation printed and

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published in the county wherein the lands or waters are situated, or if no newspaper be printed and published in such county then in any newspaper with general circulation in such county, advertising for cash bids to be presented to the commission or its director within thirty (30) days from the date of the first publication, each bid to be accompanied by a cashiers check or cash deposit in an amount equal to ten per cent (10%) of the amount bid; the highest bid shall be accepted upon payment of the balance due within ten (10) days after mailing notice by registered mail to the highest bidder; if such bidder shall default on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed; thereupon deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification; the commission shall reserve the right to reject any or all bids which do not equal or exceed the full market value of such lands and waters as determined by the commission; the commission shall convey such lands and waters by deed without covenants of warranty, executed by the governor, or in his absence or disability by the lieutenant governor, attested by the secretary of state, and further countersigned by the chairman of the state fish and game commission, attested by the secretary of the commission, and have the great seal of the state of Montana and the seal of the state fish and game commission thereto affixed, but need not be acknowledged.

(14) It shall have authority to enter into co-operative agreements with educational institutions and state, federal, or other agencies, to promote wildlife research and to train men for wildlife management. It shall have authority to enter into co-operative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations and individuals for the development of game, bird, fish, or fur-bearing animal management and demonstration projects.

(15) It shall have authority to fix seasons, bag limits, possession limits and season limits; to open or close, shorten or lengthen seasons on any species of game, bird, fish or fur-bearing animal as defined by section 26-201, and to declare areas open to the hunting of deer, antelope and elk by bow and arrow permit holders, and during times when only bow and arrows may be used, to hunt deer, antelope and elk in such areas; it is authorized to declare areas open to deer hunting where shotguns only may be used to hunt or kill deer; and it is authorized to declare areas which may be open to special license holders only, and issue special licenses in a limited number when it shall determine, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish or animals, or fur-bearing animals, or to declare such a special season and

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issue special licenses whenever game birds or animals or fur-bearing animals are causing damage to private property, or when written complaint of such damage has been filed with the state fish and game commission by the owner of such property, and in determining to whom such licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. *The procedures used for awarding the permits from the drawing system shall be determined by the state fish and game commission.*

(16) It shall have authority to establish and close to hunting, trapping or fishing, game, bird or fish refuges on public lands and, with the consent of the owner, on private lands; and close streams and lakes, or parts thereof, to hunting, trapping or fishing.

(17) It shall have authority to divide the state into fish and game districts, and to create fish, game, or fur-bearing animal districts throughout the state of Montana and to declare closed season for hunting, fishing, or trapping in any of said districts, so created, and later to open said districts to hunting, fishing, or trapping.

(18) It shall have authority to declare a closed season on any species of game, fish, or game birds, or fur-bearing animals threatened with undue depletion, from any cause, and to close any area or district of any stream, public lake, or public water, or portions thereof, to hunting, trapping or fishing, for limited periods of time, when such action is necessary to protect recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations, or to prevent the undue depletion of fish, game and fur-bearing animals and game and nongame birds, and later to open the same upon consent of a majority of the property owners affected.

(19) It shall have authority to establish game refuges for the purpose of providing safe sanctuaries in which game and fur-bearing animals or game or nongame birds may breed and replenish. Such refuges shall be established by order of the commission upon the petition and proper showing that such action is, in judgment of the fish and game commission, necessary and in the best interest of the wildlife within the area, to be included within such refuge, it being the purpose of this provision to establish small refuges rather than large preserves or rather than to close large areas to hunting or trapping.

(20) It shall have authority to designate and protect certain areas as resting, feeding and breeding grounds for migratory birds, in which hunting and molestation shall be forbidden; it being the purpose of this provision not to interfere unduly with the hunting

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of waterfowl, but to provide havens in which they can rest, feed, and breed without molestation.

(21) After petition has been duly filed with the secretary of the commission, praying that an area shall be set aside as a game refuge or haven, the said secretary shall immediately publish a notice in a paper of general circulation in the county in which said area is proposed, that a hearing in connection therewith will be held at such place in said county as may be designated on a day not less than fifteen (15) days from the date of the first publication to be specified in said notice, at which time and place all interested parties shall have the right to appear and be heard.

(22) It shall have authority to establish and maintain an educational and biological department of their work for the collection and diffusion of such statistics and information as shall be germane to the purpose of this act.

(23) It shall not have authority to issue permits to anyone to carry firearms within the confines of the state of Montana, except to regularly appointed officers and/or fish and game wardens who are paid by the state of Montana.

(24) It shall have authority to declare certain fishing waters within the state of Montana closed to fishing by all persons, excepting therefrom that class of persons whose ages are twelve (12) years or less; it being the purpose of this section to provide suitable fishing waters for the exclusive use and enjoyment of juveniles of the age of twelve (12) years or less, at such times and in such areas as the state fish and game commission shall in its discretion deem advisable and consistent with its policies relating to fishing in the state of Montana.

(25) It shall have authority to promulgate and enforce rules and regulations governing uses of lands acquired, or held under easement, by the commission, or lands which it operates under agreement with or in conjunction with a federal or state agency or private owner. Such rules shall be promulgated in the interest of public health, public safety and protection of property in regulating the use of these lands. Provided further all lease and easement agreements shall itemize uses as listed in subparagraph 13 of this section.

(26) It shall have authority to promulgate and enforce rules and regulations governing recreational uses of all public fishing reservoirs, public lakes, rivers and streams or on reservoirs and lakes which it operates under agreement with or in conjunction with a federal or state agency or private owner.

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Such rules shall be promulgated in the interest of public health, public safety and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, water skiing, surfboarding, picnicking, camping, sanitation and use of firearms on such reservoirs, lakes, rivers and streams or at designated areas along the shore of such reservoirs, lakes, rivers and streams. These rules shall be subject to review and approval by the state board of health as to public health and sanitation before becoming effective. Copies of such rules shall show such endorsement."

Approved: March 19, 1973.

CHAPTER NO. 365

An Act to Allow School Districts to Stop Payment of Issued Warrants One (1) Year After the Date of Issue.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The trustees of any school district shall be authorized to cancel any warrant that has been issued for at least one (1) year. However, the contractual obligation of the district that has been satisfied by the issuance of the warrant shall not be terminated until the time specified by section 93-2603 has elapsed. When a warrant has been caneclled and the obligation has not terminated under section 93-2603, the district may issue a duplicate warrant without the completion of an indemnity bond by the payee.

Approved: March 19, 1973.

CHAPTER NO. 366

An Act Deleting the Requirement that School Districts have Signed Claims for an Expenditure when Adequate Documentation is Provided by the Payee; and Amending Section 75-6806, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The expenditure of district moneys, other than employee contract payments, may be authorized by the trustees when:

(1) payee signed claims, wherein the payee attests to the

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accuracy of the claim and that he has not received the claimed amount, have been issued to the district or

(2) the payee has provided the district with an invoice or other document identifying the quantity and total cost per item included on the invoice.

The intention of this section is to provide sufficient documentation for each expenditure of district moneys.

Section 2. Section 75-6806, R.C.M. 1947, is amended to read as follows:

"75-6806. **Duties of trustees.** The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person, other than the trustees, acting as a governing board, shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school moneys for each fund maintained by the district in accordance with rules and regulations prescribed by the superintendent of public instruction. The record of such accounting shall be open to public inspection at any meeting of the trustees;

(2) authorize all expenditures of district moneys, and cause warrants to be issued for the payment of *lawful obligations*;

(3) have the authority to issue warrants on any budgeted fund in anticipation of budgeted revenues, except that such expenditures shall not exceed the amount budgeted for such fund;

(4) invest any moneys of the district in accordance with subsection (2) of section 16-2050 or subsection (8) of section 16-2618, R.C.M. 1947, whichever is applicable, whenever in the judgment of the trustees such investment would be advantageous to the district;

(5) report annually to the county superintendent not later than the first day of August, the financial activities of each fund maintained by the district during the last completed school fiscal year on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated. Any elemenary district that fails to submit the annual report by the time required shall not be entitled to receive any apportionment of the state interest and income moneys and such forfeited moneys shall be apportioned to the other elementary districts of the county;

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(6) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of education;

(7) cause the accounting records of the district to be audited annually as required by law; and

(8) perform, in the manner permitted by law, such other fiscal duties that are in the best interests of the district."

Approved: March 19, 1973.

CHAPTER NO. 367

An Act Amending Section 84-6903, R.C.M. 1947, to Provide for an Alternative Tax Based on Gross Sales as Required Under Article III of the Multistate Tax Compact (Title 84, Chapter 67, R.C.M. 1947).

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-6903, R.C.M. 1947, is amended to read as follows:

"84-6903. **Rate of tax imposed—income from sources within state defined**—*alternative tax.* (1) There is hereby imposed upon every corporation for each taxable year an income tax at the rate specified in section 84-1501, R.C.M. 1947, upon its net income derived from sources within this state for taxable years beginning after December 31, 1970, other than income for any period for which the corporation is subject to taxation under chapter 15, Title 84, R.C.M. 1947, according to or measured by its net income.

(2) Income from sources within this state includes income from tangible or intangible property located in or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, or interstate or foreign commerce.

(3) Pursuant to article III, section 2, of the multistate tax compact (title 84, chapter 67, R.C.M. 1947), any corporation required to file a return under this act, and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana does not exceed one hundred thousand dollars ($100,000) may elect to pay a tax of one-half of one per cent (.5%) of gross sales made in Montana

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during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to article IV, sections 16 and 17, of the multistate tax compact."

Approved: March 13, 1973.

CHAPTER NO. 368

An Act Amending Sections 89-310, 89-312, 89-314 and 89-318, R.C.M. 1947; Adding New Provisions Broadening the Scope of Weather Modification by Authorizing More Extensive Research and Development of Weather Modification.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-310, R.C.M. 1947, is amended to read as follows:

"89-310. *Definitions.* As used in this act unless the context clearly indicates otherwise:

(1) "*Weather* modification and control" means changing or controlling, or attempting to change or control, by artificial methods, the natural development of any or all atmospheric cloud forms or precipitation forms which occur in the troposphere.

(2) "Research and development" means theoretical analysis, exploration and experimentation, and the extension of investigative findings and theories of a scientific and technical nature into pracical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(3) "Department" means the department of natural resources and conservation, as provided in title 82A, chapter 15."

Section 2. Section 89-312, R.C.M. 1947, is amended to read as follows:

"89-312. *Acquisition* **of property—acceptance and expenditure of funds**—*research and development authority.* In addition to any other acts authorized by law the *department may:*

(1) acquire materials, equipment and facilities as are necessary to perform its duties under this act;

(2) receive any funds which may be offered or become available from federal grants or appropriations, private gifts, donations,

bequests, or any other source and unless their use is restricted, may expend the funds for the administration of this act;

(3) make such studies and investigations, and obtain such information as the department may deem necessary in exercising its authority in the administration or enforcement of this act;

(4) cooperate with public or private agencies in the performance of the department's functions or duties and in furtherance of the purposes of this act;

(5) represent the state in any and all matters pertaining to plans, procedures or negotiations for interstate compacts relating to weather modification and control;

(6) enter into cooperative agreements with the United States government or any of its agencies, or with the various counties and cities of this state or with any private or public agencies for conducting weather modification or cloud seeding operations;

(7) act for and represent the state and the counties, cities and private or public agencies in contracting with private concerns for the performance of weather modifications or cloud seeding operations; and

(8) conduct and may make arrangements including contracts and agreements for the conduct of, research and development activities relating to:

(a) the identification and evaluation of meteorological, environmental, ecological, agricultural, economic, hydrological and sociological impacts of weather modification in Montana;

(b) the theory and development of methods of weather modification and control, including processes, materials and devices relating thereto;

(c) the utilization of weather modification and control for agricultural, industrial, commercial, recreational and other purposes;

(d) the protection of life and property during research and operational activities."

Section 3. The department may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modification and control as it deems necessary or desirable to minimize danger to health, safety, welfare or property.

Section 4. Section 89-314, R.C.M. 1947, is amended to read as follows:

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"89-314. **Board to review applications — *exemptions.*** The board shall review all applications for weather modification *activities* and may provide by rule for exempting from the license and permit *requirements of this act:*

(1) research *and* development, and experiments by state and federal agencies, institutions of higher learning and bona fide non-profit research organizations and their agents;

(2) laboratory research and experiments;

(3) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(4) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."

Section 5. Section 89-318, R.C.M. 1947, is amended to read as follows:

"89-318. **Issuance of permits — requirements for permit.** The permits shall be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate the provisions of this act, only:

(1) if the applicant is licensed pursuant to this act;

(2) if sufficient notice of intention is published and proof of publication is filed as required in section 13 [89-322] of this act;

(3) if an applicant furnishes proof of financial responsibility in an amount to be determined by the board as required in section 14 [89-323] of this act;

(4) if the fee for the permit is paid as required in section 15 [89-324] of this act;

(5) if the weather modification and control activities to be conducted are determined by the board to be for the general welfare and the public good;

A public hearing may be held in the area to be affected by the issuance of the permit, if the department determines that such a hearing is necessary."

Approved: March 13, 1973.

CHAPTER NO. 369

An Act to Amend Section 87-106, R.C.M. 1947, Changing the Amount of Disqualifying Retirement Income; and Providing

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Amendments to Conform with Reorganization as Required in Title 82A, Chapter 10, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 87-106, R.C.M. 1947, is amended to read as follows:

"87-106. **Disqualification for benefits.** An individual shall be disqualified for benefits —

(a) If he has left work without good cause attributable to the employment for a period of not less than two (2) nor more than five (5) weeks (in addition to and immediately following the waiting period), as determined by the *division* according to the circumstances in each case.

(b) If he has been discharged:

(1) For misconduct connected with his work, or affecting his employment, for a period of not less than two (2) nor more than nine (9) weeks (in addition to and immediately following the waiting period), as determined by the *division* in each case according to the seriousness of the misconduct.

(2) For gross misconduct connected with his work or committed on the employer's premises, as determined by the *division*, for a period of twelve (12) months.

(c) If he failed, without good cause, either to apply for available and suitable work when so directed by the employment office or the *division* or to accept suitable work offered to him which he is physically able and mentally qualified to perform, or to return to his customary self-employment (if any) when so directed by the *division*. Such disqualification shall continue for the week in which such failure occurred and for not less than two (2) nor more than five (5) weeks in addition to the waiting week which immediately follow such week as determined by the *division* according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the *division* shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

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(A) If position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the *division* finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the *division* that —

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the *division*, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

(e) For any week with respect to which he is receiving or has received payment in the form of —

(1) Wages in lieu of notice or separation or termination allowance;

(2) Compensation for disability under the Workmen's Compensation Law or the Occupational Disease Law of this or any other state or under a similar law of the United States, provided, however, that when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he

shall then be entitled to receive unemployment compensation benefits under this title, if he shall be otherwise qualified. Provided further, that compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this title, provided the recipient has returned to the labor market and is otherwise qualified;

(3) Benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under unemployment compensation law of another state or of the United States, if such benefits are paid pursuant to section 87-129.

Receipt of any wages, compensation or benefits as set forth in subsection (1), (2), or (3) above, after payment of unemployment benefits, and with respect to the same week for which unemployment benefits were received, will thereupon require such individual to repay such unemployment benefits and the *division* may collect such unemployment benefits in the same manner as provided for collection of benefits under section 87-145 (d).

(f) During the school year (within the autumn, winter and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution. Notwithstanding any other provisions in this subsection, no otherwise eligible individual shall be denied benefits for any week because he is in training approved by the *division*, nor shall such individual be denied benefits with respect to any week in which he is in training approved by the *division* by reason of the application of provisions in subsection (c) of this section or the application of provisions in section 87-105 (c).

(g) Where retired and *receiving* retirement compensation paid in whole or in part from funds furnished by an employing unit, *which when prorated on a weekly basis, exceeds the average weekly benefit amount paid during the last fiscal year,* such disqualification to be applied as follows: All wages earned by such individual in the employment from which he has been retired shall not be considered or included in determining his wage credits or weekly benefit amount under sections 87-103 and 87-105. This disqualification does not extend to the receipt of benefits under the Federal Social Security Act, as amended.

(h) For any week wherein claimant leaves her most recent

employment during pregnancy, and due to such pregnancy, and such disqualifications shall continue through the period of pregnancy unless claimant presents evidence of her physical ability to work at such employment. At any time after the seventh month of pregnancy a claimant, to establish eligibility, must present evidence of physical ability to work at such employment. Further, at any time during the first two (2) months following childbirth, a claimant, to establish eligibility, must present evidence of her physical ability to work at such employment. In any of the cases set forth hereinbefore, such evidence of eligibility must be in the form of certificate of a duly licensed physician that such claimant is physically able to work at her most recent employment, and such evidence must be presented as often as requested by the *division.''*

Approved: March 19, 1973.

CHAPTER NO. 370

An Act to Repeal Sections 84-1001 through 84-1010, R.C.M. 1947, Relating to a Tax on Production of Carbon Black.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Sections 84-1001 through 84-1010, R.C.M. 1947, are repealed.

Approved: March 19, 1973.

CHAPTER NO. 371

An Act Directing the State Board of Land Commissioners to Reconvey to the City of Butte Certain Land in the City of Butte; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The state board of land commissioners is directed to reconvey the following described land to the city of Butte, for a consideration of one dollar ($1):

That portion of the SW¼ of Sec. 30, T.3.N., R.7.W., M.P.M. and more particularly described as follows:

Beginning at a point Six hundred forty-six feet (646'), South Zero degrees, Five minutes West (S 0° - 5'W) of the West one-quarter corner of said Section 30, along the West line of Section 30, and also the East right-of-way line of Rowe Road, thence South Thirty-two degrees, Twenty minutes East (S32° -

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20'E) a distance of Six hundred fifteen and fifty-seven hundreths feet (615.57') more or less, along the East right-of-way line of Rowe Road, thence North Zero degrees, Five minutes East (N0° - 5'E) a distance of Five hundred-twenty-two and seventy-two hundredths feet (522.72'), thence South Eighty-nine degrees, Thirty-three minutes West (S89° - 33'W), a distance of Three hundred thirty feet (330') to the point of beginning, containing in all an area of approximately two (2) acres.

This land was purchased by the state of Montana from the city of Butte on October 2, 1959, as a part of land needed by the state for a national guard armory and which part is not now required by the national guard. The legislature finds that it is in the best interest of the state that the described land be conveyed back to the city of Butte for use in completion of the Stodden park development. Should said land not be utilized for park or recreational purposes in the future, said land shall revert to the state of Montana.

Section 2. This act is effective on its passage and approval.

Approved: March 19, 1973.

CHAPTER NO. 372

An Act Amending Section 84-1504, R.C.M. 1947, Relating to the Computation of License Tax, by Adopting the Federal Income Tax Taxable Year Used By Corporations as the Taxable Period For Montana Corporation License Tax Return Purposes; By Providing For One (1) Signature on Returns Instead of Two (2); By Providing Definitions of "Doing Business" and "Engaging in Business"; By Providing Language to Clarify the Terms "Gross Income" and "Net Income"; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-1504, R.C.M. 1947, is amended to read as follows:

"84-1504. **Computation of license tax—return of net income to be filed**—*definitions.* (1) The license fee shall be computed *on the basis of the corporation's total net income for the taxable period. The corporation's taxable period shall be its taxable year for federal income tax purposes. In the event a corporation changes its taxable year, it shall promptly notify the state department of revenue.*

(2) Every corporation, subject to the license fee imposed *under this chapter,* shall for each *taxable period* render a true and accurate return of its net income *for the taxable period* in the manner and form to be prescribed by the state *department of revenue,* and containing such facts, data and information as are appropriate and in the opinion of the state *department of revenue* necessary to determine the correctness of the net income returned and to carry out the provisions of this act. The return shall be signed by *one (1) of the following:* the president, *the* vice-president, the treasurer, *the* assistant treasurer, or chief accounting officer. If the corporation is reporting on a calendar year basis the return shall be filed with the *department of revenue* on or before the fifteenth day of May *following the close of the calendar year,* and if reporting on a fiscal year basis the return shall be filed with *the department* on or before the fifteenth day of the fifth month following the close of its fiscal year. Upon application a corporation shall be allowed an automatic extension of time for filing its return to the fifteenth day of the third month following the date prescribed for filing of its tax return. The application is to be made on such forms as the *department of revenue* shall prescribe. The *department of revenue* may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists. *The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.* The term gross income means *all income recognized in determining the corporation's gross income for federal income tax purposes;* but shall include interest exempt from federal income tax. *No corporation is exempt from the corporation license tax unless specifically provided for under section 84-1501. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under section 84-1501 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal internal revenue code in effect for the taxable year.* The term "net income" means the gross income of the corporation less the deductions *set forth in section 84-1502.*

(3) In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of a corporation subject to the license fee imposed by this act, such receiver, trustee, or assignee shall make the return in the same manner and form as such corporation is hereinbefore required to make return, and any license fee due on the basis of such returns made by the receiver, trustee, or assignee, shall be assessed and collected in the same manner as if assessed directly against the corporation of

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whose business or property they have custody and control, and shall be paid by such receiver, trustee, or assignee out of the property of the company in his hands, prior to the claims of creditors or stockholders."

Section 2. This act shall apply to taxable years beginning on and after January 1, 1973.

Approved: March 19, 1973.

CHAPTER NO. 373

An Act Providing For Nonprofit Organizations to Establish Community Homes for the Developmentally Disabled, and Providing Authority to the Department of Institutions to Make Rules and Regulations for the Operation of the Homes.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The legislative assembly, in recognition of the wide and varied needs of developmentally disabled persons and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for care in existing state institutions, establishes by this act a community developmentally disabled home program to provide facilities and services for the training and treatment of the developmentally disabled in family oriented residences and establishes a program to provide such homes through local nonprofit corporations.

Section 2. A community home for the developmentally disabled is a family oriented residence or home designed to provide facilities for two (2) to eight (8) developmentally disabled persons established as an alternative to existing state institutions. The number of developmentally disabled persons may not exceed eight (8) in such a community home, except that the department may grant written approval for more than eight (8), but not more than twelve (12) persons.

Section 3. (1) Nonprofit corporations or associations in any community may be formed or organized for the purposes of establishing a community home or homes for the developmentally disabled under this act and to receive services, facilities, and funds as the department of institutions and other governmental units may be authorized by law to provide.

(2) The department of institutions may also establish a community home or homes for the developmentally disabled under this act and receive services, facilities, and funds as the depart-

ment of institutions and other governmental units may be authorized by law to provide.

Section 4. (1) The department of institutions shall be authorized to contract with nonprofit corporations or associations to provide facilities and services for the developmentally disabled in community homes for the developmentally disabled and is authorized to expend moneys appropriated or available for that purpose.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are authorized, at their own expense, to provide funds, materials, facilities, and services for community homes for the developmentally disabled.

Section 5. Community homes for the developmentally disabled shall be under local control, and the nonprofit corporations or associations operating said community homes are authorized to establish homes and programs they believe in the best interest of their home; provided, however that the director of the department of institutions shall adopt reasonable rules, regulations, and standards to carry out the administration and purposes of this act.

Section 6. The department of institutions is authorized to apply for and receive federal aid money or other assistance which may be available for programs in the nature of the program created by this act.

Section 7. The state department of health and environmental sciences shall promulgate and adopt standards, rules and regulations for the licensing of community homes for the developmentally disabled to insure the health and safety of the residents of such homes.

Section 8. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

Approved: March 19, 1973.

CHAPTER NO. 374

An Act Relating to the Board of Electricians; Amending Section 66-2804, R.C.M. 1947, Increasing the Number of Members of

Said Board, Increasing Their Terms of Office and Changing the Manner of Their Selection.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-2804, R.C.M. 1947, is amended to read as follows:

"66-2804. *Board of electricians.* There is hereby established a board *of electricians. The board of electricians shall consist of five (5) members, appointed by the governor, with the consent of the senate, who shall be residents of the state of Montana. One (1) member of the board shall represent the public. One (1) member of the board shall be selected from each of the following four (4) groups, each of which will be selected from three (3) names submitted by each of the following groups:*

(1) consumer members of rural electric cooperatives;

(2) master licensed electrical contractor;

(3) licensed journeyman electricians; and

(4) investor-owned electric utilities.

The members of the board shall be appointed within twenty (20) days after the effective date of this act for one (1), two (2), three (3), *four (4) and five (5)* years, respectively, as determined by the governor. *Thereafter, the members of the board shall serve for a term of five (5) years with their terms of office so arranged that one (1) term and only one (1) term shall expire on July 1 of each year.*

Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the unexpired term of such member. Each member of the board shall receive *twenty-five dollars ($25) per day for each day served in the discharge of his duties, together with* the actual and necessary expenses incurred in the performance of his duties, all to be paid out of the electricians' fund herein created. *A majority of the members of the board of electricians shall constitute a quorum for transaction of business."*

Approved: March 19, 1973.

CHAPTER NO. 375

An Act to Amend Section 41-701, R.C.M. 1947, by Including Services in Public Labor for which Montana Residents are to be Preferred.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 41-701, R.C.M. 1947, is amended to read as follows:

"41-701. **Preference of Montana labor in public works — wage scale — not to conflict with federal statutes.** In all contracts hereafter let for state, county, municipal, school, heavy highway or municipal construction, *services,* repair and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must give preference to the employment of bona fide Montana residents in the performance of said work, and that the said contractor must further pay the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. "Standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions, applicable to the county or locality in which the work is being performed," means those wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions which are paid in the county or locality by other contractors for work of a similar character performed in that county or locality by each craft, classification or type of workman needed to complete a contract under this act. When work of a similar character is not being performed in the county or locality, the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions shall be those rates established by collective bargaining agreements in effect in the county or locality for each craft, classification or type of workman needed to complete the contract. No contract shall be let to any person, firm, association or corporation refusing to execute an agreement with the above-mentioned provisions in it; provided that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors and marines, and prohibiting as unlawful any other preference or discrimination among citizens of the United States. All public works contracts under this act shall be approved in writing by the legal adviser of the contracting state, county, municipal corporation, school district, assessment district or special improvement district body or officer prior to execution by the contracting public officer or officers. The Montana commissioner of labor and industry shall undertake to keep and maintain copies of col-

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lective bargaining agreements and other information from which rates and jurisdictional areas applicable to public works contracts under this act may be ascertained. Whenever the employer is not signatory party to a collective bargaining agreement, those moneys designated as negotiated fringe benefits shall be paid to the employee as wages."

Approved: March 19, 1973.

CHAPTER NO. 376

An Act Implmenting Article II, Section 28, Article IV, Sections 2 and 4, and Article XII, Section 3 (2) of the 1972 Montana Constitution and H.B. 28 of this Session Providing the Term "Of Unsound Mind" to Include Other Like Terms in the Revised Codes of Montana, 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be added at the beginning of chapter 7, title 38, R.C.M. 1947, reading as follows:

Any reference to the terms "insane" person, "incompetent" person, a person with a "mental disease or defect," persons "disordered in mind," persons "unable to handle their own affairs," persons "feeble minded, moron, imbecile, idiot and mentally deranged," and all other like references in the Revised Codes of Montana, 1947, mean "of unsound mind."

Approved: March 19, 1973.

CHAPTER NO. 377

An Act to Provide for Job Protection for Railroad Employees Affected by Closure of Railroad Stations and Facilities.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Whenever any railroad, as defined in section 72-115 is granted the authority to close a railroad station or facility by order of the public service commission, it shall be incumbent on the commission to require employee protection. Before the commission may approve closure of a station or facility, it shall require from the railroad an agreement to protect employees affected by the closure by providing jobs equal in nature and pay to the job held by the employee for the six (6) months prior to such closure. The equal job and pay agreement must be in

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effect for a period of four (4) years or, in the alternative, the number of years the employee has been employed prior to closure, whichever is shorter. Notwithstanding any other provisions of this section, an agreement pertaining to protection of the interests of affected employees may be entered into between the railroad and duly authorized representatives of the employees.

Approved: March 19, 1973.

CHAPTER NO. 378

An Act Establishing Bluebunch Wheatgrass as the Official Grass for the State of Montana.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 19-124 which reads as follows:

19-124. The grass known as bluebunch wheatgrass, agropyron spicatum (pursh), shall be designated and declared to be the official grass of the state of Montana.

Approved: March 20, 1973.

CHAPTER NO. 379

An Act Amending Section 3-512, R.C.M. 1947, to Provide that the State Grain Laboratory at Great Falls be the Only One Authorized to Test Public Warehouse Grain and that the Fee Charged for Testing on Appeal be Commensurate with the cost.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 3-512, R.C.M. 1947, is amended to read as follows:

"3-512. **Protein test to be made of all wheat delivered grain warehousemen—manner of making test—result—fee.** Each public grain warehouseman as defined by the laws of the state shall take a sample from each load of wheat delivered to his warehouse and preserve such sample in an air-tight container with the owner's name thereon. As hauling is completed by each owner the several samples taken from all the loads of any one owner shall be mixed thoroughly together, except that high, medium, or low protein wheat from the same owner or wheat of different types, varieties or grades shall be segregated and separate containers provided for each. A one-pint portion of the composite

sample shall be submitted to the state grain laboratory at Great Falls and the balance shall be held in the owner's container. In the event of dissatisfaction on the part of warehousemen or owner either party shall have the right to a final appeal to the state laboratory.

In case of an appeal a one-pint portion of the remainder of the owner's sample shall again be submitted to the state laboratory with a statement of facts of the appeal and a final test in duplicate shall be made by the laboratory. The certificate of the state laboratory of such test shall be final and binding upon both parties in establishing the basis of the price paid by the warehouseman. A fee *commensurate with the cost of* each protein test *shall* be made, to be deducted and paid at the time of final settlement; provided, however, upon written request of owner, no protein test need be made upon said owner's wheat."

Approved: March 20, 1973.

CHAPTER NO. 380

An Act Providing for a Comprehensive State Insurance Plan and Tort Claims Procedure to be Known as the "Montana Comprehensive State Insurance Plan and Tort Claims Act."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act shall be known and may be cited as the "Montana Comprehensive State Insurance Plan and Tort Claims Act."

Section 2. As used in this act:

(1) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof.

(2) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(4) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term

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employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which this act applies in the event of a claim.

(5) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease or death, sustained by any person and caused by an occurrence, for which the state may be held liable.

(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence, for which the state may be held liable.

(7) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state of Montana.

Section 3. The department of administration shall be responsible for the acquisition and administration of all the insurance of the state, as defined herein.

The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing, insurance coverage to the state in amounts not less than the minimum specified in section 7 of this act and shall have the authority to purchase, renew, cancel and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime and fidelity, and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part. Such a plan shall never have a deductible amount in excess of twenty-five thousand dollars ($25,000) per occurrence, and shall contain provisions allowing for an aggregate deductible amount not to exceed two hundred fifty thousand dollars ($250,000) annually under each type of insurance as enumerated in the preceding paragraph.

Section 4. Only the state department of administration may procure insurance under this act except as otherwise provided herein.

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All offices, departments, agencies, authorities, commissions, boards, institutions, hospitals, colleges, universities and other instrumentalities of the state hereafter called state participants shall comply with this act and the insurance plan developed by the department of administration.

Section 5. The department of administration shall apportion the costs of all insurance purchased under this act to the individual state participants and the costs shall be paid to the department.

The department of administration, if it elects to utilize a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan, until such time as a reserve in the amount of two hundred fifty thousand dollars ($250,000), the amount of the total aggregate annual deductible, is created. In each subsequent year, the department shall be authorized to charge a sufficient amount over the actual cost of the deductible insurance to replenish such reserves.

Section 6. All political subdivisions of the state shall have the authority to procure insurance under this act.

Section 7. Every policy or contract of insurance purchased by a political subdivision, or the state department of administration for the state as permitted under the provisions of this act, shall provide:

(1) With respect to casualty and liability policies, exclusive of interest and costs, the insurance carrier or carriers shall pay on behalf of the insured governmental entity up to a limit of not less than one million dollars ($1,000,000) in any one (1) occurrence.

(2) With respect to all other types of insurance for the state, the limits of liability and the amounts of insurance shall be determined and set by the department of administration in accordance with the provisions of section 3 of this act.

Section 8. Any insurance policy, rider or endorsement hereafter issued and purchased to insure against any risk which may arise as a result of the application of this act, which contains any condition or provision not in compliance with the requirements of this act, shall not be rendered invalid thereby, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider or endorsement been in full compliance with this act, provided the policy is otherwise valid. This section shall not be construed to prohibit any such insurance policy, rider or endorsements from containing standard and customary exclusions of coverages which the depart-

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ment of administration deems to be reasonable and prudent upon considering the availability and the cost of such insurance coverages.

Section 9. Notwithstanding any provisions of law to the contrary, all political subdivisions shall have authority to levy an annual property tax in the amount necessary to pay the premium for insurance as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby; provided, that the revenues derived therefrom may not be used for any other purpose.

Section 10. Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.

Section 11. All claims against the state arising under the provisions of this act shall be presented to and filed with the secretary of state within one hundred twenty (120) days from the date of the occurrence from which the claim arose or when the injury should reasonably have been discovered, whichever is later.

Section 12. All claims against a political subdivision arising under the provisions of this act shall be presented to and filed with the clerk or secretary of the political subdivision within one hundred twenty (120) days from the date of the occurrence from which the claim arose or when the injury should reasonably have been discovered, whichever is later.

Section 13. All claims presented to and filed with a governmental entity shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six (6) months immediately prior to the time of the occurrence from which the claim arose. If the claimant is incapacitated and unable to present and file his claim within the time prescribed or if the claimant is a minor or if the claimant is a nonresident of the state and is absent during the time within which his claim is required to be filed, the claim may be presented and filed on behalf of the claimant by any relative, attorney or agent representing the claimant. A claim filed under the provisions of this section shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature or cause of the claim, or otherwise, unless it is shown that the governmental entity was in fact misled to its injury thereby.

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Section 14. No claim or action shall be allowed against a governmental entity unless the claim has been presented and filed within the time limits prescribed by this act.

Section 15. The governmental entity shall act within sixty (60) days after the filing of the claim, if at all, and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of sixty (60) days the governmental entity has failed to approve or deny the claim.

Section 16. If the claim is denied, a claimant may institute an action in the district court against the governmental entity in those circumstances where an action is permitted by this act.

Section 17. Every claim against a governmental entity permitted under the provisions of this act shall be forever barred unless an action is begun within two (2) years after the claim is filed with the governmental entity.

Section 18. The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by this act, subject to the terms of the insurance, if any.

Section 19. The department of administration may compromise and settle any claim allowed by this act, subject to the terms of insurance, if any.

Section 20. The district court shall have jurisdiction over any action brought under this act and such actions shall be governed by the Montana Rules of Civil Procedure insofar as they are consistent with this act.

Section 21. Actions against the state shall be brought in the county in which the cause of action arose or in Lewis and Clark County. In addition, a resident of the state of Montana may bring an action in the county of his residence.

Actions against a political subdivision shall be brought in the county in which the cause of action arose or in any county where the political subdivision is located.

Section 22. In all actions against the state, the state shall be named the defendant, and the summons shall be served on the secretary of state.

Section 23. Recovery against a governmental entity under the provisions of this act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act or omission gave rise to the claim.

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Section 24. Governmental entities shall not be liable for punitive damages, attorney fees or interest on any claim allowed under the provisions of this act.

Section 25. In the event no insurance has been procured by the state to pay a claim or judgment arising under the provisions of this act, the claim or judgment shall be paid from the next appropriation of the state instrumentality whose tortious conduct gave rise to the claim.

Section 26. Notwithstanding any provisions of law to the contrary and in the event there are no funds available, the political subdivision shall levy and collect a tax, at the earliest time possible, in an amount necessary to pay a claim or judgment arising under the provisions of this act where the political subdivision has failed to purchase insurance to cover a risk created under the provisions of this act.

Section 27. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

Section 28. No levy of attachment or writ of execution shall issue against any property of a governmental entity for the security or collection of any claim or judgment against any governmental entity under this act.

Approved: March 20, 1973.

CHAPTER NO. 381

An Act Providing for Lowering the Noise Intensity Level from One Hundred (100) to Ninety (90) Decibels in the Occupational Deafness Section of the Workmen's Compensation Act; Amending Section 92-710, R.C.M. 1947; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 92-710, R.C.M. 1947, is amended to read as follows:

"92-710. **Occupational deafness.** Regardless of other definitions of injury and time limitations imposed by this act, there shall be compensation awarded for occupational deafness as follows:

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(1) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment. "Noise" means sound capable of producing occupational deafness. "Noisy employment" means employment in the performance of which an employee is subjected to noise.

(a) Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1000 and 2000 cycles per second. Loss of hearing ability for frequency tones above 2000 cycles per second is not to be considered as constituting disability for hearing.

(b) The per cent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1000 and 2000 cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average *25* decibels or less in the three frequencies, as measured under ISO Standard 1964, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average *92* decibels or more in the three frequencies, as measured under ISO Standard 1964, then the same shall constitute and be total or 100 per cent compensable hearing loss.

(c) In measuring hearing impairment the lowest measured losses in each of the three frequencies shall be added togehter and divided by three to determine the average decibel loss. For every decibel of loss exceeding *25* decibels an allowance of one an one-half *per cent* (1½%) shall be made up to the maximum of one hundred *per cent* (100%), which is reached at *92* decibels.

(d) In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five (5). The resulting figure shall be added to the percentage of impairment in the poorer ear and the sum of the two divided by six (6). The final percentage shall be representative of the binaural hearing impairment.

(e) Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from non-occupational causes found in the population at any given age, there shall be deducted from the total average decibel loss, one-half decibel for each year of the employee's age over forty at the time of last exposure to industrial noise.

(f) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved

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by the use of a hearing aid.

(2) No benefits shall be payable for temporary total or temporary partial disability under this act for loss of hearing due to prolonged exposure to noise.

(3) An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss, shall be compensated at the rate provided in section *92-703.1*, not exceeding three thousand five hundred dollars ($3,500) in the aggregate from all employers. "Time of injury," "incurred such injury," "date of injury" in such case shall be the date of wage loss.

(4) Subject to the limitations herein contained, there shall be payable for total occupational deafness of one ear, forty (40) weeks of compensation; for total occupational deafness of both ears, two hundred (200) weeks of compensation; and for partial occupational deafness, compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided.

In cases covered by this subsection, "time of injury," "incurred such injury" or "date of injury" shall be exclusively the date of occurrence of any of the following events to an employee:

(a) Transfer because of occupational deafness to nonnoisy employment by an employer whose employment has caused occupational deafness;

(b) Retirement;

(c) Termination of the employer-employee relationship;

(d) Layoff, provided the layoff is complete and continuous for one year;

(e) No claim under this subsection shall be filed, however, until six (6) consecutive months of removal from noisy employment after the time of injury except that under subparagraph (d), such six (6) consecutive months period may commence within the last six (6) months of layoff.

(5) The limitation provisions in this act shall control claims arising under this subsection. Such provisions shall run from the first date upon which claim may be filed, or from the date of subsequent death, provided that no claim shall accrue to any dependent unless an award has been issued or liability admitted.

(6) No payment shall be made to an employee under this section unless he shall have worked in noisy employment for a

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total period of at least ninety (90) days for the employer from whom he claims compensation.

(7) Any amount paid to an employee under this section by an employer shall be credited against compensation payable by any employer to such employee for occupational deafness under subsections (3) and (4). No employee shall in the aggregate receive greater compensation from any or all employers for occupational deafness than that provided in this section for total occupational deafness.

(8) Occupational deafness as herein provided is distinguished from traumatic loss of hearing which is governed by the specific loss schedule hereinabove.

(9) An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deafness is established by hearing test or other competent evidence, whether or not the employee was exposed to noise within the six (6) months preceding such test, he shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has perviously been paid or awarded.

(10) No claim shall be filed, however, unless the employee is exposed eight (8) hours daily and for a period of at least ninety (90) days as above required to noise intensity levels above *90* decibels.

(11) This act shall become effective January 1, *1974.*''

Approved: March 20, 1973.

CHAPTER NO. 382

An Act Amending Section 46-232, R.C.M. 1947, Concerning the Licensing of Milk Plants and Dairies.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 46-232, R.C.M. 1947, is amended to read as follows:

"46-232. **Licensing of milk plants and dairies selling milk or cream for public consumption.** It *is* unlawful for the following *businesses* to operate in the state of Montana without first *obtaining* a license from the *department of livestock, animal health division:*

1. *A dairy* selling milk or cream for public consumption in the form in which it is originally produced.

2. Condensed, evaporated or *powdered* mlik *plant.*

3. *Fluid milk plant.* A milk plant *is* defined as a place where milk or cream is purchased or collected and prepared for distribution to the consumer in liquid form but is not produced at such place.

A license expires on the last day of December of the year issued. *The department of livestock, animal health division, may, following the procedures outlined in the Montana Administrative Procedure Act deny, suspend, or revoke a license* when *it determines* that a person to whom the license is issued has failed to comply with the rules and regulations of the *department of livestock, animal health division,* or has failed to conduct his establishment in a sanitary manner. All *license fees* collected shall be *deposited* into the general fund.

The *department of livestock is* authorized to issue a restraining order prohibiting *a* dairy from selling or giving away milk or cream not produced or handled in accordance with the laws of Montana, or the regulations of the *department of livestock, animal heal division.* It *is* unlawful for *a* dairy, while restrained, to sell or give away for public consumption any milk or cream produced or handled by *the* dairy and it *is* unlawful for *a* dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while *the* dairy is restrained.

The following license fees *are* charged for licenses issued under this section:

Condensed, evaporated or powdered milk *factory, fifty dollars ($50).*

Fluid milk plant, fifty dollars ($50).

Dairy, five dollars ($5).

A person *convicted of* violating this act *is* guilty of a misdemeanor.

Approved: March 20, 1973.

CHAPTER NO. 383

An Act to Amend Sections 69-5601, 69-5602, 69-5603, 69-5604, 69-5605, 69-5607, R.C.M. 1947, Relating to Definitions, Administration of the Act, Rules and Regulations, License Fees, Enforcement and Related Matters.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 69-5601, R.C.M. 1947, is amended to read as follows:

"69-5601. **As used in this chapter, unless the context clearly indicates otherwise:** *(1) "Tourist* campground" means a place used for public camping primarily by automobile tourists where persons can camp or secure tents *or park individual trailers or truck trailers for camping and sleeping purposes.*

(2) "Trailer court" means a parcel of land offered to the public and usually designated a trailer court, trailer park or mobile home park upon which two (2) or more spaces are occupied or intended for occupancy by trailers or mobile homes for nonrecreational dwelling purposes.

(3) "Board" means the state board of health and environmental sciences.

(4) "Department" means the state department of health and environmental sciences.

(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating or owning or offering the services of a tourist campground or trailer court."

Section 2. Section 69-5602, R.C.M. 1947, is amended to read as follows:

"69-5602. **Rules for operation—adoption by state board of health.** The *department* shall adopt rules for *construction and* operating tourist campgrounds *and trailer courts* to insure sanitation and protect public health."

Section 3. Section 69-5603, R.C.M. 1947, is amended to read as follows:

"69-5603. **License from state department of health required—rules to be posted on grounds—inspections by health officers.** A person operating a tourist campground *or trailer court* shall:

(1) obtain a license from the department;

(2) permit inspections by state, local health officers, *sanitarians or other authorized persons* at all reasonable times."

Section 4. Section 69-5604, R.C.M. 1947, is amended to read as follows:

"69-5604. **Application for license—form and contents—license fee—duration of license.** Application for a license is made to the department on forms, and containing information, required by the department. Each application shall be accompanied by a fee of *ten dollars ($10).* Licenses expire on December 31 of the year

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in which they are issued. *Fees collected by the department shall be deposited in the state general fund."*

Section 5. Section 69-5605, R.C.M. 1947, is amended to read as follows:

"69-5605. **Denial of application for or revocation of license—grounds—inspection of grounds—license fees, collection and deposit.**

The department *or local health officer or sanitarian shall:*

(1) inspect tourist campgrounds *and trailer courts* during reasonable hours as necessary;

(2) supervise the inspection of tourist campgrounds *or trailer courts* by local health officers, sanitarians or other authorized persons as necessary."

Section 6. Section 69-5607, R.C.M. 1947, is amended to read as follows:

"69-5607. **Violations and penalty—disposition of fines.** A person *violating* provisions of *this act,* or rules adopted by the *department,* is guilty of a misdemeanor. On conviction he shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100). Fines shall be paid to the county treasurer of the county in which the tourist campground *or trailer court* is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund."

Section 7. Severability. It is the legislative intent that if any section, subsection, sentence, clause or provision of the act is held invalid, the remainder of the act shall not be affected.

Approved: March 20, 1973.

CHAPTER NO. 384

An Act Increasing the Size of the Board of Natural Resources and Conservation From Five (5) to Seven (7) Members; and Amending Section 82A-1509, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82A-1509, R.C.M. 1947, is amended to read as follows:

"82A-1509. **Board of natural resources and conservation—creation—composition—designation.** (1) There is created a board of natural resources and conservation.

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(2) The board is composed of *seven (7)* members, appointed by the governor as prescribed in section 82A-112 of this act, informed and experienced in the subjects of natural resources and conservation. One member shall be appointed from each of the five (5) districts prescribed in section 26-102(1), R.C.M. 1947. *The other two (2) members are members at large.*

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act."

Approved: March 20, 1973.

CHAPTER NO. 385

An Act Amending Section 82-1149, R.C.M. 1947, Relating to the Establishment of Prices for State Newspaper Publications; Providing that Such Prices Shall Not Exceed the Minimum Going Rate Charged Any Other Advertiser for Publication or Advertisement Set in the Same Sized Type and Published for the Same Number of Insertions.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82-1149, R.C.M. 1947, is amended to read as follows:

"82-1149. **Establishment of prices for state printing.** Hereafter in all cases and instances where any publication is required by law, or is duly authorized, to be made, executed or accomplished by or for or on behalf of the state of Montana, or any of the institutions of said state or any of the departments, boards, bureaus, or commissions thereof, *or* any of the officers, agents or employees of the state when acting within the scope of their lawful authority and for the benefit of the state of Montana, the same shall be published in a newspaper printed and published in the state of Montana, and of general bona fide and paid circulation with second class mailing privilege, and having been printed and published continuously in the state of Montana for at least twelve (12) months immediately preceding such publication; the price for such publication and by whomsoever accomplished shall not exceed *the minimum going rate charged any other advertiser for the same publication, set in the same sized type and published for the same number of insertions.*"

Approved: March 20, 1973.

CHAPTER NO. 386

An Act to Amend Section 31-145, R.C.M. 1947, Providing for a Time Limit on Forwarding Reports of Conviction.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 31-145, R.C.M. 1947, is amended to read as follows:

"31-145. **When court to forward license to board and report convictions.** (a) Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the operator's or chauffeur's license of such person by the board, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted. The court shall thereupon, *within five (5) days,* forward said license to the board and at the same time forward a record of such conviction to the board, providing that if such person does not possess a driver's license the court shall so indicate in its report to the board.

(b) Every court having jurisdiction over offenses committed under this act, or any other act of this state or municipal ordinance regulating the operation of motor vehicles on highways, shall forward, *within five (5) days,* to the board a record of the conviction or forfeiture of bail, not vacated, of any person in said court for a violation of any said laws other than regulations governing standing or parking, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted.

(c) For the purposes of this act the term "conviction" shall mean a final conviction. Also, for the purposes of this act a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

(d) Any person convicted of any offense which makes mandatory the revocation of the operator's or chauffeur's license, such period of revocation shall commence from date of conviction or forfeiture of bail."

Approved: March 20, 1973.

CHAPTER NO. 387

An Act Requiring Slow-moving Vehicles to Yield to Other Vehicles Following It; Authorizing the Establishment of Turnout Areas; Defining a Slow-moving Vehicle; Amending Section 32-2147, R.C.M. 1947; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

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Section 1. Section 32-2147, R.C.M. 1974, is amended to read as follows:

"32-2147. **Minimum speed regulations.** (a) No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

On a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow-moving vehicle, including a passenger vehicle, behind which four (4) or more vehicles are formed in line, shall turn off the roadway at the nearest place designated as a turnout by signs erected by the authority having jurisdiction over the highway, or wherever sufficient area for a safe turnout exists, in order to permit the vehicles following it to proceed. As used in this section a slow-moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place.

The department of highways is authorized to designate and construct such turnouts and to erect signs at appropriate places advising motorists of this statute.

(b) Whenever the board or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the board or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law."

Section 2. This act is effective on its passage and approval.

Approved: March 20, 1973.

CHAPTER NO. 388

An Act to Amend Section 59-605, R.C.M. 1947, By Providing That An Appointment to Fill a Vacancy is for the Unexpired Term; Providing for De Jure Officers Before Senate Confirmation; and Repealing Section 59-606, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 59-605, R.C.M. 1947, is amended to read as follows:

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"59-605. **(1) Vacancies, how filled when not otherwise provided for.** When any office becomes vacant, and no mode is provided by law for filling *the* vacancy, the governor *shall* fill *the* vacancy by *appointing a qualified person to fill the unexpired term of the person whose office became vacant.*

(2) If the legislature or one (1) house of the legislature must confirm an appointment of a person appointed by the governor to fill a vacancy, the governor may appoint the person to assume office before the legislature meets in its next regular session to consider the appointment. A person so appointed is vested with all the functions of the office upon assuming the office, and is a de jure officer, notwithstanding the fact that the legislature has not yet confirmed the appointment. If the legislature does not confirm the appointment, the governor shall make a new appointment to fill the unexpired term."

Section 2. Section 59-606, R.C.M. 1947, is repealed.

Approved: March 20, 1973.

CHAPTER NO. 389

An Act to Establish Guidelines for the Management and Use of Investments Held by Eleemosynary Institutions and Funds.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. In this act:

(1) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(2) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include

(a) a fund held for an institution by a trustee that is not an institution, or

(b) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(3) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

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(4) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(5) "Historic dollar value" means the aggregate fair value in dollars of

(a) an endowment fund at the time it became an endowment fund,

(b) each subsequent donation to the fund at the time it is made, and

(c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

The determination of historic dollar value made in good faith by the institution is conclusive.

(6) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

Section 2. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by section 6. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument or the charter of the institution.

Section 3. Section 2 does not apply if the applicable gift instrument indicates the donor's intention that met appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after the effective date of this act.

Section 4. In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applic-

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able gift instrument or if the applicable law other than law relating to investment by a fiduciary, may:

(1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships or individuals, and obligations of any government or subdivision or instrumentality thereof;

(2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) include all or part of any institutional fund in any pooled or common fund maintained by the institution; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

Section 5. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

(1) delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;

(2) contract with independent investment advisors, investment counsel or managers, banks, or trust companies, so to act; and

(3) authorize the payment of compensation for investment advisory or management services.

Section 6. In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long-and short-term needs of the institution in carrying out its educational, religious, charitable or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on

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its investments, price level trends and general economic conditions.

Section 7. (1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(2) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability or impossibility of identification, the governing board may apply in the name of the institution to the appropriate court for release of a restriction imposed by the applicable gift instrument on the use or investment of an instituitonal fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(3) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable or other eleemosynary purposes of the institution affected.

(4) This section does not limit the application of the doctrine of cy pres.

Section 8. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 9. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

Section 10. This act may be cited as the "Uniform Management of Institutional Funds Act."

Approved: March 20, 1973.

CHAPTER NO. 390

An Act Defining Certifying Agency and Protected Variety; Providing for Labeling of Seeds; Providing a Penalty; Providing For Testing of Seed Samples; Providing for Additional Pro-

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hibitions; Amending Sections 3-802.1, 3-802.2, 3-804, 3-807, 3-808, 3-810 through 3-814 and 3-820, R.C.M. 1947; and Repealing Section 3-806, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 3-802.1, R.C.M. 1947, is amended to read as follows:

"3-802.1. **Definitions.** Terms used in this act and not otherwise identified are hereby defined:

(1) Agricultural seeds shall be the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds, and shall include lawn seeds and mixtures of seeds.

(2) Vegetable seeds shall include the seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds.

(3) Flower seeds shall include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and are commonly known and sold under the name of flower seeds in this state.

(4) (a) The term "weed seeds" shall include the seeds or bulblets of all plants generally recognized as weeds within this state, and shall include noxious weed seeds.

(b) Noxious weed seeds are hereby divided into two (2) groups defined as follows:

1. "Prohibited noxious weed seeds" are the seeds of perennial and other serious weeds that not only reproduce by seed but also may spread by underground roots, stems, and other reproductive parts, and which when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Prohibited noxious weed seeds shall include the seeds of:

Canada thistle	(Cirsium arvense)
Leafy spurge	(Euphorbia esula)
Hoary cress	(Cardaria draba)
Quackgrass	(Agropyron repens)
Russian knapweed	(Centaurea *repens*)
Perennial *sowthistle*	(Sonchus arvensis)
Field bindweed	(Convolvulus arvensis)
Dalmatian toadflax	(Linaria dalmatica)
Halogeton	(Halogeton glomeratus)
Medusa-head wildrye	(Elymus caput-medusae)
Creeping *bellflower*	(Campanula rapunculoides)
Yellow toadflax	(Linaria vulgaris)

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2. "Restricted noxious weed seeds" are the seeds of weeds that are very objectionable in fields, lawns and gardens of this state, but can be controlled by good cultural practices. Restricted noxious weed seeds shall include the seeds of:

Dodder	(Cuscuta spp.)
Blue lettuce	(Lactuca pulchella)
St. Johnswort	(Hypericum perforatum)
Oxeye daisy	(Chrysanthemum leucanthemum)
Spotted knapweed	(Centaurea maculosa)
Hoary alyssum	(Berteroa incana)
Wild oats	(Avena fatua)
Buckhorn plantain	(*Plantago* lanceolata)
Chickweed	(Stellaria spp.)
Curly dock	(Rumex crispus)

(5) The term "hybrid" applied to kinds of varieties of seed means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines; (b) one inbred or a single cross with an open pollinated variety; or (c) two or more selected clones, seed lines, varieties, or species. "Controlling the pollination" means to use a method hybridization which will produce pure seed which is at least seventy-five per cent (75%) hybrid seed. Hybrid designations shall be treated as variety names.

(6) The terms "approximate percentage" and "approximate number" shall mean the percentage or number with the variations above or below as allowed according to the tolerance limits defined in the "rules for seed testing" adopted by the Association of Official Seed Analysts.

(7) The term "percentage of germination" shall mean the percentage of seeds which show normal sprouts as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the "rules for seed testing" adopted by the Association of Official Seed Analysts.

(8) The term "name of state in which the seed was grown" shall mean any of the several states of the United States or the foreign country.

(9) The term "other crop seeds" shall mean any agricultural, vegetable, or flower seeds other than the seed or the mixture of seeds under consideration.

(10) The term "sell" shall include "offer for sale," "expose for sale," "have in possession for sale," "exchange," "barter," or

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"trade." It shall also include agricultural seeds which are furnished to growers for the production of a crop on contract.

(11) The term "certifying agency" means:

(a) an agency authorized under the laws of a state, territory or possession to officially certify seed and which has standards and procedures to assure the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the department of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subsection (11)(a) of this section.

(12) The term "protected variety" means a variety for which a certificate has been issued by the U.S. plant variety protection office, or for which an application for protection has been filed, granting the owner or his authorized agent exclusive rights in the sale and distribution of the variety."

Section 2. Section 3-802.2, R.C.M. 1947, is amended to read as follows:

"3-802.2. **Labeling of agricultural seeds.** The owner, vendor, or person in possession of each and every package, parcel, or lot of agricultural seeds, as defined in the first section [3-802.1] of this act, that contains one (1) pound, or more, of agricultural seeds, whether in package or in bulk, shall before offering the seeds for sale affix in a conspicuous place on the exterior of the container a written or printed label in the English language in legible type or copy and the label shall contain a statement specifying:

(1) A lot number or other distinguishing mark.

(2) Kind. The name of each kind of seed present in excess of five per cent (5%) shall be shown on the label and need not be accompanied by the word "kind." When two or more kinds of seed are named on the label, the name of each kind shall be accompanied by the percentage of each. When only one kind of seed is present in excess of five per cent (5%) and no variety name or type designation is shown, the percentage of that kind may be shown as "pure seed" and such percentage shall apply to seed of the kind named.

Variety. (a) The following kinds of agricultural seeds are generally labeled as to variety and shall be labeled to show the variety name or the words "Variety Not Stated":

Alfalfa	Oat
Barley	Pea, field

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Bean, field	Rye
Beet, field	Safflower
Brome, smooth	Sorghum
Clover, crimson	Sorghum-Sudan hybrid
Clover, red	Soybean
Clover, white	Sudangrass
Corn, field	Sunflower
Corn, pop	Trefoil, Birdsfoot
Fescue, tall	Wheat, common
Flax	Wheat, Durum
Millet, foxtail	

(b) If the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety." The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of five per cent (5%) and are named on the label, the name of each variety shall be accompanied by the percentage of each.

(3) If any one kind or kind and variety of seed present in excess of five per cent (5%) is "hybrid" seed, it shall be designated "hybrid" on the label. The percentage that is hybrid shall be at least ninety-five per cent (95%) of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds or varieties are present in excess of five per cent (5%) and are named on the label, each that is hybrid shall be designated as hybrid on the label. Any one kind or kind and variety that has pure seed which is less than ninety-five per cent (95%) but more than seventy-five per cent (75%) hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show (a) the percentage of pure seed that is hybrid seed or (b) a statement such as "Contains from seventy-five per cent (75%) to ninety-five per cent (95%) hybrid seed." No one kind or variety of seed shall be labeled as hybrid if the pure seed contains less than seventy-five per cent (75%) hybrid seed.

(4) Origin, state or foreign country if known, of alfalfa, red clover, white clover, native range grasses and field corn other than hybrid. If the origin is unknown, the fact shall be stated.

(5) The approximate percentage of germination of agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test,

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the percentage of actual germination and the percentage of hard seeds shall be stated separately; with the provision that any portion or all of the percentage of hard seeds may be added to the percentage of germination, and stated as "total germination and hard seed."

(6) The approximate percentage by weight of pure seed, meaning the freedom of agricultural seeds from inert matter and from other seeds.

(7) The approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in agricultural seeds.

(8) The approximate total percentage by weight of weed seeds.

(9) The approximate percentage by weight of other crop seeds in agricultural seeds.

(10) The name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of agricultural, vegetable, or flower seeds.

(11) The full name and address of the seedsman, importer, dealer or agent, other person or persons, or firm or corporation selling the agricultural seed.

(12) In the case of mixtures of agricultural seeds which contain two (2) or more kinds of seed in excess of five per cent (5%) by weight of each, when sold as mixtures:

(a) Name of mixture.

(b) The name and approximate percentage by weight of each kind of agricultural seed present in the mixture in excess of five per cent (5%) by weight of the total mixture.

(c) Approximate percentage by weight of broken seeds and other inert matter in the mixture of agricultural seeds.

(d) Approximate percentage by weight of weed seeds as defined in the first section [3-802.1] of this act.

(e) Approximate percentage by weight of other crop seed in the mixture of agricultural seeds.

(f) The name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of mixtures of agricultural seeds, subject, however, to restrictions as specified in the fourth section [3-820] of this act.

(g) Approximate percentage of germination of each kind of agricultural seed present in the mixture in excess of five per cent

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(5%) by weight, together with the month and year the seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the hard seed may be added to the percentage of germination and stated as "total germination and hard seed."

(h) Full name and address of the vendor of the mixture.

(13) When seed is exchanged or transferred from one seed labeler to another, it shall be accompanied by a shipping document which clearly shows the kind(s) of seed, quantity of each kind, and each container in a lot shall carry appropriate lot number designation, and accompanied by mechanical analysis for each lot so involved."

Section 3. Section 3-804, R.C.M. 1947, is amended to read as follows:

"3-804. **Penalty.** Any person, firm, or corporation who sells, offers or exposes for sale or distribution in the state any agricultural seeds for seeding purposes, without complying with the requirements of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than *one hundred dollars ($100),* nor more than *three hundred dollars ($300)* and costs of such prosecution, and upon conviction of the second or any subsequent offense shall be fined not less than *five hundred dollars ($500)* nor more than *one thousand dollars ($1,000)* and costs of such prosecution."

Section 4. There is a new section to be numbered 3-806.1, R.C.M. 1947, which reads as follows:

3-806.1. **Testing agent of submitted samples.** The grain and seed laboratory shall analyze any seed samples taken from seed lots offered for sale in the state and submitted by the department.

Section 5. Section 3-807, R.C.M. 1947, is amended to read as follows:

"3-807. **Samples may be sent to the laboratory for testing.** *Any citizen of this state may request the grain and seed laboratory to examine, analyze and test samples of seed upon payment of the fee and compliance with rules governing the submission of seed samples for such service. Samples of seed analyzed and tested shall be charged for at rates determined jointly by the department and the director of the grain and seed laboratory. All fees collected by the grain and seed laboratory shall be used to defray the expenses incurred by the laboratory under this act."*

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Section 6. Section 3-808, R.C.M. 1947, is amended to read as follows:

"3-808. **Certificate of test presumptive evidence.** *The certificate of the grain and seed laboratory, giving results of any examinations, analyses or tests of any seed samples made under the authority of the department is presumptive evidence of the correctness of the facts stated in it.*"

Section 7. Section 3-810, R.C.M. 1947, is amended to read as follows:

"3-810. **Rules and regulations by Montana** *state university*— **certification agencies.** *Every person, firm, association or corporation subject to the provisions of this act shall observe, perform or comply with all rules and standards for seed certification established or specified by Montana state university, hereafter referred to as the university, as to what crops grown or to be grown in Montana shall be eligible for certification hereunder, as to the conduct of such certification, either by said university directly or by agents or agencies authorized by it for the purpose, and as to standards, requirements and forms of and for certification hereunder; provided, however, that not more than one such agent or agency for certification shall be designated for any one specified crop. No certification, within the provisions of this act shall be made or authorized except by or through said university.*"

Section 8. Section 3-811, R.C.M. 1947, is amended to read as follows:

"3-811. **Certification work on self-supporting basis.** Certification work, whether conducted by said *university* or by an agency designated by it, shall be on a self-supporting basis and not for financial profit."

Section 9. Section 3-812, R.C.M. 1947, is amended to read as follows:

"3-812. *University* **exempt from liability.** The said *university* shall not be financially responsible for debts incurred by damages, or contracts broken by certifying agencies in conducting certification work."

Section 10. Section 3-813, R.C.M. 1947, is amended to read as follows:

"3-813. **Withholding certification.** The said *university* or its designated agency or agencies, may withhold certification from any grower of seeds or plant parts who is engaged in or attempting to engage in any dishonest practices for the purpose of evading the provisions of this act, including standards, rules and regulations

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laid down by the said *university* or its designated agency or agencies to cover certification."

Section 11. Section 3-814, R.C.M. 1947, is amended to read as follows:

"3-814. **Unlawful use of certification—penalty.** It shall be unlawful for any person, firm, association or corporation to issue, make, use or circulate any certification as defined in this act, without the authority and approval of the said *university,* or its duly authorized agency, as herein provided. Every person, firm, association, or corporation who shall violate any of the provisions of this act pertaining to certification shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars ($100.00) nor exceeding five hundred dollars ($500.00) for each offense."

Section 12. Section 3-820, R.C.M. 1947, is amended to read as follows:

"3-820. **Prohibitions.** No person, firm, corporation, copartnership or association shall sell or transport for use in planting in the state of Montana any agricultural, vegetable or flower seed that:

(1) Contains prohibited noxious weed seeds.

(2) Contains restricted noxious weed seeds in excess of the maximum numbers per pound as follows:

Species		Number allowed per pound
Dodder	(Cuscuta spp.)	18
Blue lettuce	(Lactuca pulchella)	27
St. Johnswort	(Hypericum perforatum)	27
Oxeye daisy	(Chrysanthemum leucanthemum)	90
Spotted knapweed	(Centaurea maculosa)	18
Hoary alyssum	(Berteroa incana)	9
Wild oats	(Avena fatua)	45
Buckhorn plantain	(Plantago lanceolata)	90
Chickweed	(Stellaria spp.)	9
Curly dock	(Rumex crispus)	45

(3) Contains in excess of two per cent (2%) or more of weed seed.

(4) Is offered or exposed for sale more than nine (9) calendar months from the last day of the month in which the germination

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test was completed. This nine (9) month limitation shall not apply when seed is packaged in hermetically sealed containers within twelve (12) months after harvest. The container must be conspicuously labeled in not less than eight (8) point type to indicate:

(a) That the container is hermetically sealed.

(b) That the seed has been preconditioned as to moisture content.

(c) That the germination test is valid for a period not to exceed eighteen (18) months from the date of the germination test for seeds offered for sale on a wholesale basis, and for a period not to exceed thirty-six (36) months for seeds offered for sale at retail.

(d) That the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act of August 1963, with subsequent revisions.

(5) Is represented in any manner to be for lawn seeding purposes, unless it contains at least fifty per cent (50%) pure seed of perennial *fine-textured* species which shall be specified by rules and regulations pursuant to this act. However, grass mixtures which do not contain fifty per cent (50%) pure seed of perennial *fine-textured* grasses may be sold. When these grass mixtures are contained in packages of twenty-five (25) pounds or less, they shall carry the statements: "Not recommended for a *fine-textured* perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable." A definition of *fine-textured* varieties to be promulgated in the regulations is as follows:

(a) Bluegrasses—all varieties except Canada Bluegrass (Poa compressa), Annual Bluegrass (Poa annua) *and Rough Bluegrass (Poa trivialis).*

(b) Chewings Red Fescue and all improved varieties.

(c) Creeping Red Fescue and all improved varieties.

(d) Bentgrass—all varieties.

(e) *Fine-textured* Ryegrasses.

(6) The labeling, advertising or other representation subject to this act represents the seed to be certified seed of any class thereof unless:

(a) it has been determined by a seed certifying agency that such seed conformed to standards of purity and identity as to kind, species (and subspecies, if appropriate) or variety; and

(b) that the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate) or variety.

(7) Is labeled with a variety name for which a U.S. certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act (7 U.S.C. 2321 et. seq.), without the authority of the owner of the variety; or is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which the certificate or application for "protection" specifies sale only as a class of certified seed; provided, that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with approval of, the owner of the variety."

Section 13. Section 3-806, R.C.M. 1947, is repealed.

Approved: March 20, 1973.

CHAPTER NO. 391

An Act to Amend Sections 4-354, 7-122, 15-2285, 15-22-112, 16-910, 16-2010, 16-3706, 16-3912, 16-3916, 25-605, 25-609, 32-2607, 32-3804, 50-1032, 50-1220, 51-303, 53-703, 53-1013, 53-1025, 59-1109, 59-1110, 66-223, 66-227, 67-2211, 67-2212, 67-2213, 67-2214, 67-2215, 67-2216, 67-2217, 67-2218, 67-2219, 67-2220, 67-2221, 67-2222, 67-2223, 67-2224, 67-2225, 67-2226, 67-2317, 67-2318, 67-2340, 67-2342, 69-3502, 69-3504, 69-3504.1, 69-3923, 69-6007, 71-236, 75-6410.1, 75-6711, 81-928, 81-930, 81-1115, 81-1116, 81-1117. 81-1118, 82-1501, 82-1506, 82-1512, 82-1925.1, 82A-1801, 82A-1803, 82A-1804, 82A-1808, 89-1812, 89-2401, 91-502, 91-504, 91-505. 91-506, 91-507, 91-508, 91-509, 91-523, 91-4321, 91-4414.1, 91-4415, 91-4418, 91-4419, 91-4421, 91-4423, 91-4425, 91-4426, 91-4427, 91-4428, 91-4429, 91-4430, 91-4431, 91-4437, 91-4438, 91-4439, 91-4440, 91-4442, 91-4443, 91-4444, 91-4445, 91-4446, 91-4447, 91-4448, 91-4449, 91-4450, 91-4451, 91-4454, 91-4455, 91-4459, 91-4460, 91-4461, 91-4462, 91-4463, 91-4464, 94-1506, and 94-35-260, R.C.M. 1947, to Provide for a General Revision of the Tax Laws of Montana to Implement Article VIII, Sections 3 and 7 of the 1972 Montana Constitution By Designating the State Department of Revenue as the Tax Administration Agency for the State of Montana, By Replacing the State Board of Equalization With A State Tax Appeal Board, or Liquor Control Board, By Designating County Assessors As Agents of the State Department of Revenue, and by

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Providing For County Tax Appeal Boards; and to Repeal Sections 16-1016, 16-3703, and 91-4466, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 4-354, R.C.M. 1947, is amended to read as follows:

"4-354. **Effect when vote is against sale of beer.** If a majority of the votes cast are against the sale of beer the board of county commissioners must publish the result once a week for four (4) weeks in the newspapers in which the notices of election were published, and from the date of the election no further licenses to vend beer in the county shall be issued by the *liquor control board,* and after the publication of notice proclaiming the result of the election is against the sale of beer, all licenses then existing shall be canceled by the state *liquor control board,* and thereafter it shall be unlawful to sell any beer in any such county."

Section 2. Section 7-122, R.C.M. 1947, is amended to read as follows:

"7-122. **Taxation of associations.** Every association shall be assessed for and pay taxes upon all real and personal property owned by such association, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained by deducting from the amount of bonds, notes and other evidence of indebtedness, including evidence of indebtedness secured by mortgage on real estate or personal property, of such associations, the amount standing to the credit of the members of any such association, upon its books, and any indebtedness representing money borrowed for use as moneyed capital. Said moneyed capital as so ascertained shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith. The secretary of every such association shall furnish to the *department of revenue or its agent in* the county in which the principal office of such association is located, within five (5) days after demand thereof, a condensed statement verified by his oath, of the resources and liabilities of such association as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year; if such secretary shall fail to make the statement hereby required, the *department or its agent* shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such association. The *department or its agent* shall thereupon make an assessment of the real estate and personal property owned by such association, and of the moneyed capital employed in the business of such association, which assessment shall be as fair and equitable as he may be able to make from the best

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information available, or *the department or its agent* may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such association to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

The amount standing to the credit of each member of any such association, upon its books, shall be considered and held as the individual credit of each member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares from which loans have been made, or money advanced, by the association, and as to such shares they shall be listed for taxation at the net cash value of the stock, to be ascertained by deducting the loan from the cash value of the shares. Associations organized under or controlled by this act shall be subject to taxation in no other way."

Section 3. Section 15-2285, R.C.M. 1947, is amended to read as follows:

"15-2285. **Articles of dissolution — tax clearance certificate.** If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) The name of the corporation.

(b) That the secretary of state has theretofore filed a statement of intent to dissolve the corporation, and the date on which such statement was filed.

(c) That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.

(d) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.

(e) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the

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satisfaction of the judgment, order or decree which may be entered against it in any pending suit.

No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree, or file any other document by which the term of existence of any corporation is terminated except a decree of involuntary dissolution in an action brought by the attorney general, nor shall the secretary of state file any certificate of surrender by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the state *department of revenue* and files with said court, clerk of the district court, or secretary of state as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the state *department of revenue* is satisfied from the available evidence that all taxes imposed by Title 84 of the Revised Codes of Montana, have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana."

Section 4. Section 15-22-112, R.C.M. 1947, is amended to read as follows:

"15-22-112. **Withdrawal of foreign corporation.** A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) That the corporation is not transacting business in this state.

(c) That the corporation surrenders its authority to transact business in this state.

(d) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state.

(e) A post-office address, including street and number, if any, to which the secretary of state may mail a copy of any process against the corporation that may be served on him.

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(f) That all taxes imposed on the corporation by Title 84 of the Revised Codes of Montana have been paid, supported by a certificate by the state *department of revenue,* to be attached to said application, to the effect that the state *department of revenue* is satisfied from the available evidence that all taxes imposed by Title 84 of the Revised Codes of Montana have been paid. The issuance of such a certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

The application for withdrawal shall be made in a form prescribed by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

Section 5. Section 16-910, R.C.M. 1947, is amended to read as follows:

"16-910. **Regular meetings—extra sessions.** The board of county commissioners, except as may be otherwise required of them, may meet at the county seat of their respective counties on the first and third Mondays of each and every month of the year for the purpose of allowing bills and attending to any other business that may regularly come before them, and may sit not exceeding three days at each session, except the December session, at which any time, they may sit not exceeding 8 days. But the board may at any time, by giving at least two days' posted public notice, hold an extra session of not over two days' duration; provided, that the limitations as to the time of sessions of the board of county commissioners contained in this section shall not apply to counties of the first, second, third and fourth classes."

Section 6. Section 16-2010, R.C.M. 1947, is amended to read as follows:

"16-2010. **Limitation on amount of bonds—issuance in excess of limitations void.** No county shall issue bonds for any purpose which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per centum (2½%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the issuance of such bonds; provided, however, that a county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per centum (2½%), but will not exceed five per centum (5%) of the value of such taxable property, when necessary to do so for the purpose

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of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes; provided, however, that this act shall not be construed to extend limitations on bonded indebtedness for county high school purposes, as fixed by section 75-4114, and acts amendatory thereof; and further provided, that the foregoing limitations shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932. All bonds issued by any county in excess of the limitations herein fixed shall be null and void."

Section 7. Section 16-3706, R.C.M. 1947, is amended to read as follows:

"16-3706. **Maximum number of deputy treasurers, auditors and county attorneys.** The whole number of deputies allowed the county treasurer must not exceed in counties of the first class, two; in counties of all other classes, one; provided, that the board of county commissioners may allow such additional deputies as may be necessary during the months of November and December of each year. The whole number of deputies allowed to county auditors in counties of the first, second and third classes must not exceed one. The whole number of deputies allowed the county attorney in counties of the first and second classes must not exceed one chief deputy, and one deputy; and in all other counties such deputies as may be allowed by the board of county commissioners, not to exceed one chief deputy and one deputy."

Section 8. Section 16-3912, R.C.M. 1947, is amended to read as follows:

"16-3912. **Administrative activities.** (a) The county manager shall be responsible to the county board for the administration of the following activities, unless otherwise authorized by the county board or directed by laws:

(1) The collection of taxes, license fees, and other revenues of the county and its subdivisions;

(2) The custody and accounting of all public funds belonging to or handled by the county;

(3) The purchase of all supplies for the county except those specifically excepted in this act;

(4) The care of all county buildings;

(5) The care and custody of all the personal property of the county;

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(6) The recording of deeds, mortgages and other instruments, and the entry and preservation of such other public records as the law requires;

(7) The construction and maintenance of county highways and bridges;

(8) The employment of prisoners;

(9) The care of the poor; the operation of county charitable and correctional institutions, and the other welfare activities;

(10) Public health work and the operation of the county hospitals;

(11) Any or all matters of property and business in connection with the administration of schools and other governmental units within the county which shall be delegated to him by these units with the approval of the county board;

(12) Such other activities of the county as are not specifically assigned to some other officers or agency by this act or by laws of the state subsequently enacted.

(b) These activities shall be distributed among the departments hereinafter described. There shall be a department of finance; a department of public works; a department of public welfare; and the county board may, upon recommendation of the county manager, establish additional departments. Any activity which is unassigned by this act shall be assigned by the county board to an appropriate department, and any activity so assigned may, upon the recommendation of the county manager, be transferred by the board to another department.

(c) The manager shall appoint a director for each department provided for or authorized by this section, and he may, with the consent of the county board, act as the director of one or more departments himself, or appoint one director for two or more departments. The subordinate officers and employees of each department shall be appointed or employed by the manager, unless he chooses to delegate this power in particular instances to subordinate officer."

Section 9. Section 16-3916, R.C.M. 1947, is amended to read as follows:

"16-3916. **Department of finance.** (a) The director of finance shall have charge of the administration of the financial affairs of the county, including the budget; the assessment of property for taxation; the collection of taxes, license fees, and other revenues; the custody of all public funds belonging to or handled by the county; control over the expenditures of the county and

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its subdivisions; the disbursement of county funds; the purchase, storage and distribution of all supplies, materials, equipment, and contractual services needed by any department, office, or other using agency of the county; the keeping and supervision of all accounts; and such other duties as the county board may by ordinance or resolution require.

(b) No money shall be drawn from the treasury of the county, nor shall any obligation for the expenditure of money be incurred, except in pursuance of the annual appropriation ordinance or resolution, or legally enacted supplement thereto. Accounts shall be kept for each item of appropriation made by the county board. Each such account shall show in detail the appropriations made thereto, the amount drawn thereon, the unpaid obligations charged against it, and the unencumbered balance in the appropriation account, properly chargeable, sufficient to meet the obligation entitled by contract, agreement, or order.

(c) The director of finance shall either act as tax collector and county treasurer or shall appoint and have supervision over these officials; provided, that in lieu of the election or appointment of a treasurer the county board may select and designate annually, by ordinance or recorded resolution, some bank or banks or trust company as an official treasury for the funds of the county. All moneys received by any officer or employee of the county for or in connection with the business of the county shall be paid promptly into the hands of the county treasurer or the bank or trust company acting as county treasury. Any bank serving as a depository for county funds shall be subject to such requirements as to security therefor and interest thereon as prescribed by general statute. All interest on money so deposited shall accrue to the benefit of the county.

(d) The director of finance shall be charged with the keeping of all general books of financial and budgetary control for all departments and offices of the county. Report shall be made to him daily, or as often as he may require, showing the receipt of all moneys and disposition thereof. He shall submit to the county board through the manager each month a summary statement of revenues and expenses for the preceding month, detailed as to appropriations and funds in such manner as to show the exact financial condition of the county and of each department and division thereof. He shall submit once a year, or more often if the county board requires it, a complete financial statement showing the assets and liabilities of the county and of each of its subdivisions.

(e) The state examiner shall have the power and it shall be his duty to make at least one (1) examination each year of the

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books and accounts of any county which may have adopted and which is operating under the county-manager form of government, and to prescribe the necessary records and systems of accounting as provided in sections 82-1002 to 82-1010, inclusive, and the actions of the county commissioners and all other officers thereof shall be subject to the provisions of said sections, and such county shall pay the fee provided for in section 5-904.

(f) The director of finance shall either act as purchasing agent or shall appoint and have supervision over this official. The purchasing agent shall make all purchases for the county in the manner, and with such exceptions, as may be provided by resolution of the county board. He shall have authority to make transfers of supplies, materials and equipment between departments and offices, to sell any surplus supplies, materials, or equipment, and to make such other sales as may be authorized by the county board. He shall also have power, with the approval of the county board, to establish suitable specifications or standards for all supplies, materials and equipment to be purchased for the county, and to inspect all deliveries to determine their compliance with such specifications and standards. He shall have charge of such storerooms and warehouses of the county as the county board may provide.

Before making any purchase or sale, the purchasing agent shall invite competitive bidding under such rules and regulations as the county board may by ordinance or resolution establish. The purchasing agent shall not furnish any supplies, materials, equipment or contractual services to any department or office except upon receipt of properly approved requisition and unless there be an unencumbered appropriation balance sufficient to pay for the same."

Section 10. Section 25-605, R.C.M. 1947, is amended to read as follows:

"25-605. **Salaries of certain county officers.** The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries as provided in section 16-3302, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County	Salary Col. A	Taxable Valuation of County	Salary Col. B
Below	3,000....$3,060	Below $2,000,000.....	$3,060
3,000 to	3,999....$3,150	$2,000,000 to 2,999,999	$3,150
4,000 to	4,999....$3,220	3,000,000 to 3,999,999	$3,220

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5,000	to 5,999	....$3,290
6,000	to 6,999	....$3,370
7,000	to 7,999	....$3,590
8,000	to 8,999	....$3,650
9,000	to 9,999	....$3,740
10,000	to 12,499	....$3,800
12,500	to 14,999	....$3,880
15,000	to 17,499	....$3,960
17,500	to 19,999	....$4,030
20,000	to 24,999	....$4,100
25,000	to 29,999	....$4,170
30,000	to 39,999	....$4,250
40,000	to 49,999	....$4,360
50,000	to 59,999	....$4,510
60,000	to 69,999	....$4,670
70,000	to 79,999	....$4,800
80,000	to 89,999	....$4,950
90,000	to 99,999	....$5,100
100,000	and over	....$5,260

4,000,000	to 4,999,999	$3,290
5,000,000	to 5,999,999	$3,370
6,000,000	to 6,999,999	$3,590
7,000,000	to 7,999,999	$3,650
8,000,000	to 9,999,999	$3,740
10,000,000	to 11,999,999	$3,800
12,000,000	to 13,999,999	$3,880
14,000,000	to 15,999,999	$3,960
16,000,000	to 17,999,999	$4,030
18,000,000	to 19,999,999	$4,100
20,000,000	to 22,499,999	$4,170
22,500,000	to 24,999,999	$4,250
25,000,000	to 29,999,999	$4,360
30,000,000	to 34,999,999	$4,510
35,000,000	to 39,999,999	$4,670
40,000,000	to 44,999,999	$4,800
45,000,000	to 49,999,999	$4,950
50,000,000	to 54,999,999	$5,100
55,000,000	to 59,999,999	$5,260
60,000,000	to 64,999,999	$5,260
65,000,000	to 69,999,999	$5,260
70,000,000	to 74,999,999	$5,260
75,000,000	to 79,999,999	$5,260
80,000,000	to 84,999,999	$5,260
85,000,000	to 89,999,999	$5,260
90,000,000	to 94,999,999	$5,260
95,000,000	to 99,999,999	$5,260
100,000,000	and over	.....$5,260

The total salary paid to county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county superintendents of schools and county sheriffs, and county surveyors in counties where county surveyors receive salaries, as provided in section 16-3302, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation; provided, however, that county superintendents of schools and county sheriffs shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of four hundred dollars ($400) per year."

Section 11. Section 25-609, R.C.M. 1947, is amended to read as follows:

"25-609. **Salaries fixed by county commissioners in September of each election year—salaries not subject to change during entire term.** In September of any year in which the county treasurer, county clerk, county school superintendent, county sheriff, county attorney, or clerk of the district court is to be elected, the county

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commissioners shall, by resolution, fix the salaries of the officials to be elected in conformity with the schedule in section 25-605, based on the population as shown in the last decennial federal census and on the taxable valuation of the county at the time the salaries are fixed. When so fixed, the salaries shall not be changed during the entire term for which such officials are elected regardless of any change in population or taxable valuation of the county during such term. If a vacancy occurs in any office, the person who is appointed or elected to fill the unexpired term in the office vacated shall receive the same salary as the person vacating the office."

Section 12. Section 32-2607, R.C.M. 1947, is amended to read as follows:

"32-2607. **Apportionment of state funds to federal-aid secondary highway system.** (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:

(a) One-fourth (1/4) in the ratio of land area in each district to the total land area in the state.

(b) One-fourth (1/4) in the ratio of the rural population in each district to the total rural population in the state.

(c) One-fourth (1/4) in the ratio of the rural road mileage in each district to the total rural road mileage in the state.

(d) One-fourth (1/4) in the ratio of value of rural lands in each district to the total value of rural lands in the state.

(2) Funds apportioned to each district shall be further apportioned to each county therein on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, expenditures in any county may exceed the amount apportioned to that county to the extent of three (3) times the amount of the last apportionment thereto. The amount of any such excess expenditures shall be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

(a) Rural population—Total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the latest federal census.

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(i) Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

(b) Rural road mileage—All road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system.

(i) Rural road mileage reported by the road inventory of the commission shall be used in determining rural road mileage.

(c) Value of rural lands—Includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the state *department of revenue.*

(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the commissioner of state lands and investments.

(iii) The average value of privately owned lands shall be the average value of state-owned lands, if the actual value is not available."

Section 13. Section 32-3804, R.C.M. 1947, is amended to read as follows:

"32-3804. **Limitation on amount of bonds — issuance in excess of limitations void.** (1) Except as otherwise provided hereafter and in section 16-2010, no county shall issue bonds which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per cent (2½%) of the value of the taxable property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per cent (2½%), but will not exceed five per cent (5%) of the value of such taxable property, when necessary for the purpose of replacing, rebuilding or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) All bonds issued by any county in excess of the limitations herein fixed shall be null and void, except that the limi-

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tations shall not apply to refunding bonds issued to pay or retire county bonds lawfully issued prior to January 1, 1932."

Section 14. Section 50-1032, R.C.M. 1947, is amended to read as follows:

"50-1032. **Credit on taxes — inspection of mines — reports to** *department of revenue.* Any open cut or strip coal mine operator who shall enter into a contract with the commission providing for the reclamation of lands on which the strip mining of coal has been conducted shall annually receive credit toward the payment of the coal mines license tax provided in chapter 13 of Title 84, R.C.M. 1947, in an amount equal to one-half (½) of the actual expenditure for the on-site reclamation work performed on such lands under such contracts during the preceding year, said credit shall not exceed one cent (1¢) per taxable ton of coal mined by said operator.

The commission shall at least annually inspect each strip mining operation for coal in this state, and shall, if the operator of such mine has entered into a contract for the reclamation of strip mined lands, annually determine the actual expenditures for all reclamation work performed by such mine operator during the perceding year. The commission shall promptly, after each annual determination of such expenditure, report to the state **department of revenue**, the state treasurer, and the operator actual expenditures for reclamation work performed on strip mined lands during the immediately preceding year by each strip mine operator, and one-half (½) of the amount, not to exceed one cent (1¢) per taxable ton of coal mined by said operator and the amount so reported shall be deducted from coal mines license tax due from such operator pursuant to the provisions of chapter 13 of Title 84, R.C.M. 1947, subject to the limitations herein set forth."

Section 15. Section 50-1220, R.C.M. 1947, is amended to read as follows:

"50-1220. **Exemption of small miners — written agreement — noncompliance a misdemeanor.** No provisions of this act shall apply to any small miner when the small miner agrees in writing,
(1) That he shall not pollute or contaminate any stream; and

(2) That he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(3) He shall not conduct a mining operation which will result in more than five (5) acres of the earth's surface being disturbed and unreclaimed.

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Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners, and/or operators of said project to fine of not less than ten dollars ($10) nor more than one hundred dollar ($100), payable to the *department of revenue* of the state of Montana, or any board, commission, or person authorized to collect said fine."

Section 16. Section 51-303, R.C.M. 1947, is amended to read as follows:

"51-303. **Definitions.** When used in this act, the following words and prases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning: (1) "Person" shall mean and include any individual, firm, association, company, partnership, corporation for profit or nonprofit corporation, joint stock company, club, agency, syndicate, co-operative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator.

(2) "Wholesaler" shall include any person who:

(a) purchases cigarettes directly from the manufacturer; or

(b) purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers; or

(c) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this act.

(3) "Retailer" shall mean and include any person who operates a store, stand, booth or concession for the purpose of sales of cigarettes at retail.

(4) "Administrative agency" or "*department*" shall mean the state *department of revenue* of Montana and, where the meaning of the context so requires, all deputies and employees duly authorized by such board.

(5) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

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(6) "Sale" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatever.

(7) "Sell at wholesale," "sale at wholesale" and "wholesale" sales shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(8) "Sell at retail," "sale at retail" and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

(9) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower.

(10) (a) The term "cost to the wholesaler" shall mean the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business by the wholesaler," as evidenced by the standards and methods of accounting regularly employed by the said wholesaler in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance and advertising. The cost of doing business by a wholesaler shall also include any rebates, patronage dividends or concessions no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said wholesaler, expressed as a percentage and applied to the "basic cost of cigarettes."

(b) In the absence of the filing with the *department* of proof which the *department* declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be presumed to be five per centum (5%) of the "basic cost of cigarettes" to the wholesaler, plus cartage to the retail outlet, if performed or paid for by the wholesaler, which cartage cost, in the absence of the filing with the *department* of satisfactory proof of a lesser or higher cost, shall be considered to be three-fouths of one per centum (3/4 of 1%) of the "basic cost of cigarettes" to the wholesaler.

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(11) (a) The term "cost to the retailer" shall mean the "basic cost of cigarettes" to the retailer plus the "cost of doing business by the retailer" as evidenced by the standards and methods of accounting regularly employed by the said retailer in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs, (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance, and advertising, including any rebates or concessions no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said retailer, expressed as a percentage and applied to the "basic costs of cigarettes"; provided, however, that any retailer who purchases from the manufacturer or from any other person at or at less than or about the price normally and usually charged for purchases in wholesale quantities shall, in determining "cost to the retailer," pursuant to this subsection, add the "cost of doing business by the wholesaler," as determined in subparagraph 10 (b) of this act, to the "basic cost of cigarettes" to said retailer, as well as the "cost of doing business by the retailer."

(b) In the absence of the filing with the *department* of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the "cost of doing business by the retailer" shall be presumed to be ten per centum (10%) of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the *department* of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer," who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be ten per centum (10%) of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler."

(12) "Business day" shall mean any day other than a Sunday or a legal holiday."

Section 17. Section 53-703, R.C.M. 1947, is amended to read as follows:

"53-703. **Montana motor vehicle reciprocity board creation.** (1)There is hereby created for the purpose of administration of this act, the Montana motor vehicle reciprocity board, which shall consist of six (6) members to be appointed by the governor. One of said members shall be the registrar of motor vehicles; one shall

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be a member of the Montana highway patrol; one shall be a member of the Montana state highway commission; one shall be a member of the state *department of revenue;* one shall be an attorney from the legal staff of the Montana state highway commission; and one shall be the gross vehicle weight supervisor. In lieu of any above-named member, the governor may instead appoint a qualified representative from the commission, board or office designated. The members of the board shall meet in Helena, Montana, within two weeks after the effective date of this act. At the said first meeting and annually in December thereafter, the board shall elect a secretary who shall be a member of said board, and the board shall elect a chairman and a vice-chairman from its own membership who shall hold offices for one (1) year. Election as chairman and vice-chairman shall not interfere with the member's right to vote on all matters before the board. The board shall meet at such other times at it deems advisable, but at least once every two (2) calendar months, and shall from time to time adopt rules and regulations for the admission of this act as may be deemed necessary.

(2) The board shall act collectively in harmony with recorded resolutions or motions adopted by the majority of the board at regular or special meetings, notice of which meetings shall be given to all members pursuant to the rules of said board. Four (4) members shall constitute a quorum at any meeting; but no resolution, motion, or other decision of the board shall be adopted or passed without the favorable vote of at least four (4) members."

Section 18. Section 53-1013, R.C.M. 1947, is amended to read as follows:

"53-1013. **Certificate of ownership.** (1) No snowmobile shall be operated upon any public or private lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets or highways, unless it has first been registered with the state *department of revenue* in accordance with the laws of this state.

(2) Before such registration may be accomplished, the owner of a snowmobile shall make application for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose, and to provide for substantially the following information: Name of owner, residence by town and county, business or home mail address, name and address of lien holder, amount due under contract or lien, name and address of manufacturer, model number or name, serial number, and name and address of dealer or other person from whom acquired. The application shall be signed by at least

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one owner, or by a properly authorized officer or representative of the owner.

(3) If a snowmobile has previously been registered, under the provisions of this act, the application for registration must be accompanied by the immediately previous registration receipt, or by an affidavit upon a prescribed form, stating under oath that the vehicle had not been operated during the immediately previous year; provided, however, that this paragraph shall not be applicable to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of this act were not in force and effect.

(4) Upon completion of the application of registration, in quintuplicate, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two copies of the application marked "owner's certificate of registration," one of which shall be marked "file copy," and forward one copy and the application to the registrar of motor vehicles, who shall cause to be entered the information contained in the application upon the corresponding records of his office, and shall furnish the applicant a certificate of ownership, which shall contain the information found on the registration, and the owner shall, at all times, retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation.

(5) Upon application for an owner's certificate of registration, a fee of two dollars ($2) shall be paid to the county treasurer, one-half (½) of which fee shall be forwarded by the county treasurer to the registrar of motor vehicles.

(6) Before a registration decal may be applied for pursuant to the laws of this state, the owner must present the owner's certificate of ownership, or copy of completed application therefor, as a prerequisite to completing the application for the registration decal."

Section 19. Section 53-1025, R.C.M. 1947, is amended to read as follows:

"53-1025. **Display of tax-paid decals on snowmobiles required —application and issuance.** No snowmobile shall be operated by any person in the state of Montana unless there is displayed in a conspicuous place thereon a decal as visual proof that Montana personal property taxes have been paid thereon for the current year. Application for the issuance of such tax-paid decal shall be made to the state *department of revenue* upon forms to be furnished for this purpose, which may be obtained from the

department or at the county assessor's office in the county wherein the owner resides, and is to provide for substantially the following information: name of owner, address, registration number, name of manufacturer, model number, make, horsepower, year of manufacture, statement evidencing assessment, payment of property tax, and such other information as the *department* may require. Said application shall be signed by the owner of the snowmobile and transmitted to the *department* accompanied by a fee of one dollar ($1). Upon receipt of the application in approved form the *department* shall issue to the applicant a decal in the style and design prescribed by the *department* and of a different color than the preceding year, numbered numerically."

Section 20. Section 59-1109, R.C.M. 1947, is amended to read as follows:

"59-1109. **Supplementation of social security benefits.** Any school district of the state, may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum pursuant to section 218 of the Federal Social Security Act, among the members of the staff and teachers of the school or schools under the jurisdiction of such board of trustees. If the majority of votes cast in any such referendum indicates that said staff and teachers approve, then such board of trustees shall certify to the state *department of revenue* (or such other agency as may be by legislation designated to administer such program and enter into agreements for extensions of social security coverage) that the conditions for coverage by social security, required by section 218 of the Social Security Act have been complied with."

Section 21. Section 59-1110, R.C.M. 1947, is amended to read as follows:

"59-1110. **Eligibility of staff and teachers—payroll deductions.** Pursuant to such certification, the staff and teachers of any such district shall be eligible for coverage under the provisions of the Federal Social Security Act, and the fiscal officer of such district shall thereafter collect the contributions required under the Federal Social Security Act, section 218, by payroll deduction from the staff and teachers and from the school district as employer; and said funds and accounts shall be deposited with the state *department of revenue,* or such other agency as may be designated by the legislature to administer Social Security Act coverage in this state, and held in the contributions fund as provided by sections 59-1101 to 59-1108. For the purposes of this act, the contributions with respect to services, equivalent to the employer's tax established by the Federal Social Security Act shall be the first obligation against any state funds received for

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school support by any school district, high school district or county high school, and shall first be paid therefrom."

Section 22. Section 66-223, R.C.M. 1947, is amended to read as follows:

"66-223. **Application for license—contents.** Any person, firm, association or corporation desiring to offer any new goods, wares or merchandise for sale at public auction shall file application for a license for that purpose with the treasurer of the county in this state in which the said auction is proposed to be held. The application shall be filed not less than ten (10) full days prior to the date the said auction is to be held. The application shall state the following facts:

(a) The name, residence and post-office address of the person, firm, association or corporation making the application, and if a firm, association or corporation, the name and address of the members of the firm or officers of the association or corporation, as the case may be.

(b) If the applicant is a corporation then there shall be stated on the application form the date of incorporation, the state of incorporation and if for a corporation formed in a state other than the state of Montana the date on which such corporation qualified to do business as a foreign corporation in the state of Montana.

(c) The name, residence and post-office address of the auctioneer who will conduct such auction sale.

(d) A detailed inventory and description of all such new goods, wares or merchandise to be offered for sale at such auction which inventory shall set forth the cost to the applicant of the several items contained in such inventory.

(e) Attached to the application shall be copies of notices, which ten (10) days before the said application has been filed, shall have been mailed registered mail by the proposed seller to the state *department of revenue* of the state of Montana or such other department as may be charged with the duty of collecting gross income taxes, corporation licenses, or such other taxes of a comparable nature, and to the assessor of the county in which said auction is to be held. The said notices must state the precise time and place where the said auction is to be held, the approximate value of the new goods, wares or merchandise to be offered for sale or sold and such other information as the said state *department of revenue* may request.

(f) The number of days on which said auction will be held.

(g) The said application shall be verified."

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Section 23. Section 66-227, R.C.M. 1947, is amended to read as follows:

"66-227. **Inventory of merchandise sold and prices received—filing.** Within ten (10) days after the last day of said auction sale, the applicant shall file in duplicate with the county treasurer of the county wherein said auction sale was held, an inventory of all merchandise sold at such auction and the price received therefor, which inventory shall be verified by the person who filed the application for the license with the said treasurer. The county treasurer shall immediately after receiving such report and inventory forward a copy thereof to the state *department of revenue.*"

Section 24. Section 67-2211, R.C.M. 1947, is amended to read as follows:

"67-2211. **Report of abandoned property.** (a) Every person holding moneys or other property, tangible or intangible, presumed abandoned under this act shall report to the state *department of revenue* with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) Except with respect to travelers' checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of three dollars ($3) or more presumed abandoned under this act;

(2) In case of unclaimed moneys of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under three dollars ($3) each may be reported in aggregate;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the state *department of revenue* prescribes by rule as necessary for the administration of this act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

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(d) The report shall be filed before November 1 every three (3) years as of June 30 next preceding, but the reports of life insurance corporations, banking and financial organizations and co-operatives, shall be filed before May 1 of each year as of December 31 next preceding. The state *department of revenue* may request that any other reports be filed each year. The state *department of revenue* may postpone the reporting date upon written request by any person required to file a report. The state *department of revenue* shall furnish forms for this report.

(e) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the ten-year period proceding its effective date."

Section 25. Section 67-2212, R.C.M. 1947, is amended to read as follows:

"67-2212. **Notice and publication of lists of abandoned property.** (a) Within one hundred twenty (120) days from the filing of the report required by section 67-2211, the state *department of revenue* shall cause notice to be published at least once each week for two (2) successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property," and shall contain:

(1) The names in alphabetical order and last known addresses, if any, or person listed in the report and entitled to notice within the county as hereinbefore specified.

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(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state *department of revenue.*

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five (65) days from the date of the second published notice, the abandoned property will be placed not later than eighty-five (85) days after such publication date in the custody of the state *department of revenue* to whom all further claims must thereafter be directed.

(c) The state *department of revenue* is not required to publish in such notice any item of less than twenty-five dollars ($25) unless the *department* deems such publication to be in the public interest.

(d) Within one hundred twenty (120) days from the receipt of the report required by section 67-2211, the state *department of revenue* shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars ($25) or more presumed abandoned under this act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the state *department of revenue,* property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the state *department of revenue* to whom all further claims must be directed.

(f) This section is not applicable to sums payable on travelers' checks or money orders presumed abandoned under section 67-2202."

Section 26. Section 67-2213, R.C.M. 1947, is amended to read as follows:

"67-2213. **Payment or delivery of abandoned property.** Every person who has filed a report as provided by section 67-2211 shall

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within twenty (20) days after the time specified in section 67-2212 for claiming the property from the holder, or in the case of sums payable on travelers' checks or money orders presumed abandoned under section 67-2202 within twenty (20) days after the filing of the report, pay or deliver to the state *department of revenue* all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 67-2212, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the state *department of revenue,* but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment."

Section 27. Section 67-2214, R.C.M. 1947, is amended to read as follows:

"67-2214. **Relief from liability by payment or delivery.** Upon the payment or delivery of abandoned property to the state *department of revenue,* the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the state *department of revenue* under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the state *department of revenue* pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the state *department of revenue* shall forthwith reimburse the holder for the payment. Any holder who has paid moneys to the state *department of revenue* pursuant to this act, and after exhausting his legal remedies, is compelled by authority of another jurisdiction to make a second payment to any other state, upon certified proof thereof and upon proof that the state *department of revenue* was notified in writing of the claim of such other state within thirty (30) days after such claim has been asserted, the state *department of revenue* shall refund to such holder the amount of such second payment not in excess of the amount paid to the state *department of revenue* under this act."

Section 28. Section 67-2215, R.C.M. 1947, is amended to read as follows:

"67-2215. **Income accruing after payment or delivery.** When property is paid or delivered to the state *department of revenue* under this act, the owner is not entitled to receive income or other increments accruing thereafter."

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Section 29. Section 67-2216, R.C.M. 1947, is amended to read as follows:

"67-2216. **Periods of limitation not a bar.** The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the state *department of revenue.*"

Section 30. Section 67-2217, R.C.M. 1947, is amended to read as follows:

"67-2217. **Sale of abandoned property.** (a) All abandoned property other than money delivered to the state *department of revenue* under this act shall within one (1) year after the delivery be sold by the *department* to the highest bidder at public sale in whatever city in the state affords in the *department's* judgment the most favorable market for the property involved. The state *department of revenue* may decline highest bid and reoffer the property for sale if the *department* considers the price bid insufficient. The *department* need not offer any property for sale if, in the *department's* opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three (3) weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the state *department of revenue* pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The state *department of revenue* shall execute all documents necessary to complete the transfer of title."

Section 31. Section 67-2218, R.C.M. 1947, is amended to read as follows:

"67-2218. **Deposit of moneys.** (a) All moneys received under this act, including the proceeds from the sale of abandoned property under section 67-2217, shall forthwith be deposited by the state *department of revenue* with the state treasurer for credit to the trust and legacy fund, public school account of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding twenty-five thousand dollars ($25,000) from which he shall make prompt payment of claims allowed by

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the *department* as hereinafter provided. Before making the deposit the state *department of revenue* shall record the name and last known address of each person appearing from the holder's reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) Before making any deposit to the credit of the public school account, the state *department of revenue* may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.''

Section 32. Section 67-2219, R.C.M. 1947, is amended to read as follows:

"67-2219. **Claim for abandoned property paid or delivered.** Any person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state *department of revenue.''*

Section 33. Section 67-2220 R.C.M. 1947, is amended to read as follows:

"67-2220. **Determination of claims.** (a) The state *department of revenue* shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held the *department* shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by the *department* and the reasons for the *department's* decision. The decision shall be a public record.

(b) If the claim is allowed, the state *department of revenue* shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.''

Section 34. Section 67-2221, R.C.M. 1947, is amended to read as follows:

"67-2221. **Judicial action upon determination.** Any person aggrieved by a decision of the state *department of revenue* or as to whose claim the *department* has failed to act within ninety (90) days after the filing of the claim, may commence an action in the district court of Lewis and Clark county to establish his claim. The proceeding shall be brought within ninety (90) days after the decision of the state *department of revenue* or within one hundred

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eighty (180) days from the filing of the claim if the *department* fails to act. The action shall be tried de novo without a jury."

Section 35. Section 67-2222, R.C.M. 1947, is amended to read as follows:

"67-2222. **Election to take payment or delivery.** The state *department of revenue*, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which the *department* deems to have a value less than the cost of giving notice and holding sale, or the *department* may, if the *department* deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates."

Section 36. Section 67-2223, R.C.M. 1947, is amended to read as follows:

"67-2223. **Examination of records.** The state *department of revenue*, or their designated agent, may at reasonable times and upon reasonable notice examine the records of any person if the *department* has reason to believe that such person has failed to report property that should have been reported pursuant to this act."

Section 37. Section 67-2224, R.C.M. 1947, is amended to read as follows:

"67-2224. **Proceeding to compel delivery of abandoned property.** If any person refuses to deliver property to the state *department of revenue* as required under this act, the *department* shall bring an action in a court of appropriate jurisdiction to enforce such delivery."

Section 38. Section 67-2225, R.C.M. 1947, is amended to read as follows:

"67-2225. **Penalties.** (a) Any person who willfully fails to render any report or perform other duties required under this act shall be punished by a fine of fifty dollars ($50) for each day such report is withheld, but not more than one thousand dollars ($1,000).

(b) Any person who willfully refuses to pay or deliver abandoned property to the state *department of revenue* as required under this act shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisonment for not more than six (6) months, or both, in the discretion of the court."

Section 39. Section 67-2226, R.C.M. 1947, is amended to read as follows:

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"67-2226. **Rules and regulations.** The state *department of revenue* is hereby authorized to make necessary rules and regulations to carry out the provisions of this act and shall be represented in the enforcement of the provisions of this act by the special assistant attorney general in charge of escheated estates."

Section 40. Section 67-2317, R.C.M. 1947, is amended to read as follows:

"67-2317. **Approval of declaration before recording.** Before a declaration may be recorded, it must be approved by the *agent of the department of revenue in* the county in which the property is located. No declaration shall be approved unless:

(1) The name is proper so as to comply with section 67-2316; and

(2) All taxes and assessments due and payable have been paid."

Section 41. Section 67-2318, R.C.M. 1947, is amended to read as follows:

"67-2318. **Recording of declaration.** When a declaration is made and approved as required, it shall, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date thereof shall be entered thereon. At the time of recording a declaration, the person offering it for record shall also file an exact copy, certified by the recording officer to be a true copy thereof, with the *department of revenue or its agent in the county in which the property is located.*"

Section 42. Section 67-2340, R.C.M. 1947, is amended to read as follows:

"67-2340. **Separate taxation.** (1) Each unit with its percentage of undivided interest in the common elements shall be considered a parcel of real property subject to separate assessment and taxation by any taxing unit in like manner as other parcels of real property. Neither the building nor any of the common elements shall be considered a parcel for purposes of taxation.

(2) In determining the true cash value of a unit with its undivided interest in the common elements, the *department of revenue or its agent* may use the percentage of undivided interest in the common elements appertaining to a unit as expressed in the declaration."

Section 43. Section 67-2342, R.C.M. 1947, is amended to read as follows:

"67-2342. **Appraisal and assessment of units.** The state *de-*

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partment of revenue shall have the authority to make rules and regulations prescribing methods best calculated to secure uniformity according to law in the appraisal and assessment of units constituting part of a property submitted to the provisions of sections 67-2302 and 67-2342."

Section 44. Section 69-3502, R.C.M. 1947, is amended to read as follows:

"69-3502. **Definitions.** As used in this act, unless the context clearly requires a different meaning:

(1) "Vessel": for purposes of registration "vessel" shall mean those watercraft described under section 3 of public law 85-911, H.R. 11078 unless otherwise defined by the fish and game commission of the state of Montana; as pertains to the safety regulations of this act "vessel" means every description of watercraft other than a seaplane on the water capable of being used as a means of transportation on water.

(2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.

(3) "Owner" means a person, other than a lien holder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(4) "Waters of this state" means any waters within the territorial limits of this state.

(5) "Person" means an individual, partnership, firm, corporation, association or other entity.

(6) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(7) The word "board" shall mean the fish and game commission of the state of Montana in all sections of this act."

Section 45. Section 69-3504, R.C.M. 1947, is amended to read as follows:

"69-3504. **Identification number.** (a) The owner of each motorboat or vessel requiring numbering by this state shall file an application for number, accompanied by a certificate of tax of personal

property showing payment of tax on the motorboat or vessel for the current year, with the *state department of revenue* or its designated representative, on forms approved by the *state department of revenue.* The application shall be signed by the owner of the motorboat or vessel, and shall be accompanied by a fee of one ($1) dollar. Upon receipt of the application in approved form and certificate hereinabove referred to, the *state department of revenue* shall enter the same upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat or vessel and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat or vessel, the identification number in such manner as may be prescribed by rules and regulations of the *state department of revenue,* in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat or vessel for which issued, whenever such motorboat or vessel is in operation.

(b) The numbering requirements of this act shall apply to motorboats or vessels operated by manufacturers or dealers except that the description of the motorboat or vessel shall be omitted from the certificate of number and such number shall be permitted to be transferred from one vessel to another. In lieu of the descriptive material on said certificate of number the word "manufacturer" or "dealer" as appropriate, will appear on said certificate. The manufacturer or dealer may have the number awarded printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to a vessel to be demonstrated or tested so long as the number is exhibited so as to in all other respects meet the requirements of act relating to display of numbers.

(c) The owner of any motorboat or vessel already covered by a number in full force and effect, which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state, shall record the number prior to operating the motorboat or vessel on the waters of this state in excess of the ninety-day reciprocity period provided for in section 69-3506(1). Such recordation shall be in the manner and pursuant to the procedure required for the award of number under subsection (a) of this section, except that no additional or substitute number shall be issued.

(d) Should the ownership of a motorboat or vessel change, a new application form with fee shall be filed with the *state department of revenue* and a new certificate of number shall be awarded in the same manner as provided for in an original award of num-

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ber, provided further that the number assigned may be determined by the *state department of revenue.*

(e) In the event that an agency of the United States government shall have in force an over-all system of identification numbering for motorboats or vessels within the United States, the numbering system employed pursuant to this act by the *state department of revenue* shall be in conformity therewith.

(f) The *state department of revenue* may award any certificate of number directly or may authorize any person to act as agent for the awarding thereof. In the event that a person accepts such authorization, he may be assigned a block of numbers and certificates therefor which upon award, in conformity with this act and with any rules and regulations of the board shall be valid as if awarded directly by the *state department of revenue.*

(g) All records of the *state department of revenue* made or kept pursuant to this act shall be public records; provided that the *state department of revenue* shall submit to the registrar of motor vehicles of this state, correct copies of all certificates of registration issued pursuant to this act; and provided further that said registrar shall make said records immediately available to all law enforcement offices of this state.

(h) Every certificate of number awarded pursuant to this act shall continue in full force and effect for a period not to exceed one (1) year, and shall be renewed annually unless sooner terminated or discontinued in accordance with the provisions of this act. Certificates of number may be renewed by the owner in the same manner provided for in the initial securing of the same. The *state department of revenue* shall notify each owner of a registered vessel of expiration of registration a reasonable time prior to expiration of registration.

(i) The *state department of revenue* shall fix a day and month of the year on which certificates of number due to expire during the calendar year shall lapse and no longer be of any force and effect unless renewed pursuant to this act.

(j) In event of transfer of ownership, the purchaser shall furnish the *state department of revenue* notice of the acquisition of all or any part of his interest other than the creation of a security interest in a motorboat or vessel numbered in this state pursuant to subsection (a) and (b) of this section, or of the destruction or abandonment of such motorboat or vessel, within reasonable time thereof. Such transfer, destruction or abandonment shall terminate the certificate of number for such motorboat or vessel except that in the case of a transfer of a part interest

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which does not affect the owner's right to operate such motorboat or vessel, such transfer shall not terminate the certificate of number.

(k) Any holder of a certificate of number shall notify the *state department of revenue* within reasonable time if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the *state department of revenue* with his new address. The *state department of revenue* may provide in its rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(l) No number other than the number awarded to a motorboat or vessel or granted reciprocity pursuant to this act, shall be painted, attached or otherwise displayed on either side of the bow of such motorboat or vessel.

(m) Fees collected under the provision of this section shall be transmitted to the state treasurer who shall deposit the fees in the motorboat certificate identification account of an earmarked revenue fund. These fees shall be used only for the administration and enforcement of sections 69-3501 through 69-3508.1 and 69-3508.2 through 69-3518, R.C.M. 1947."

Section 46. Section 69-3504.1, R.C.M. 1947, is amended to read as follows:

"69-3504.1. **Decals to be displayed.** (1) Every Montana boat numbered in accordance with the provisions of section 69-3504 shall be required to display decals thereon as visual proof the boat is currently registered. For this purpose the state *department of revenue* shall issue a pair of decals with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed by the state *department of revenue,* and shall be a color differing from the preceding year.

(3) Decals may be displayed by one of the following manners:

(a) One on each side of the bow immediately aft of the registration numbers.

(b) One on windshield and one facing aft on transom or superstructure so the one may be easily visible from forward and the other from aft of the boat.

(c) If windshield curves aft or has side glass facing port and starboard, one may be placed on each side so one may be easily visible from each side."

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Section 47. Section 69-3923, R.C.M. 1947, is amended to read as follows:

"69-3923. **Classification of property for taxation.** (1) Facilities, machinery or equipment, attached or unattached to real property, utilized to reduce, eliminate, control or prevent air pollution, shall be classified as Class Seven (7) for the purpose of taxation under the provisions of section 84-301.

(2) The decision, whether the facilities, machinery or equipment are utilized to reduce, eliminate, control or prevent air pollution, shall be made by the director and approved by the state *department of revenue.*"

Section 48. Section 69-6007, R.C.M. 1947, is amended to read as follows:

"69-6007. **Service fees—maintenance assessments—disposal fee.** To defray the cost of maintenance and operation of said refuse disposal district, the board, shall establish a fee for service with approval of the county commissioners. This fee shall be assessed to all units in the district that are receiving a service for the purpose of maintenance and operation of said district. The fees shall be based upon a family residential unit, and fees for commercial and industrial accounts shall be based on the comparison with a typical residential unit as to volume and type of waste produced. In no case shall the fee for disposal service exceed one-half (½) the total for both collection and disposal services. The month the service begins the *department of revenue or its agent* shall *insure that* the amount of this fee *is placed* on the tax notices to be collected with the tax. If a property owner fails to pay this fee, it shall become a lien upon the property. All fees and other moneys received by the district shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which said refuse disposal district was created. Warrants upon such funds shall be drawn by the board of county commissioners upon presentation of claims approved by the board. Fees and other moneys collected by joint county refuse disposal districts may be administered by one (1) county treasurer's office upon mutual agreement by the county commissioners of any joint refuse disposal district."

Section 49. Section 71-236, R.C.M. 1947, is amended to read as follows:

"71-236. **Investigation of relatives' state income tax returns—return prima facie evidence of income—penalty for disclosing contents of return.** The state department of public welfare shall be required and it shall be its duty, when necessary to determine the

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financial circumstances of those relatives herein named, to secure from the state *department of revenue* a report of the amount of income set forth on the return required by section 84-4914. The state *department of revenue* is authorized and it shall be its duty to divulge or make known to the state department of public welfare the amount of income or any particulars set forth or disclosed in any report or return required under the State Income Tax Act, and submitted by the relatives herein named.

A separate income tax return shall constitute prima facie evidence of taxable income, amount of tax and number of dependents of the individual making it; a joint income tax return of husband and wife shall constitute prima facie evidence of taxable income, amount of tax and number of dependents of either spouse, for the purposes of this act.

It shall be unlawful for the *department* or any deputy, assistant, agent, clerk or other officer or employee to divulge or make known in any manner any information secured from the state *department of revenue* in the administration of this act, except for purposes directly connected with the administration of this act. Violation of the provisions of this section shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of one (1) year, thereafter."

Section 50. Section 75-6410.1, R.C.M. 1947, is amended to read as follows:

"75-6410.1. **It is the policy and purpose of this law to eliminate all statutory electors' qualifications for voting on the creation of any school district levy, debt or liability except such qualifications as are validly required by or pursuant to the Montana constitution.**"

Section 51. Section 75-6711, R.C.M. 1947, is amended to read as follows:

"75-6711. *Statement* **of district, cities and towns valuations.** By the second Monday of July, the *department of revenue or its agent in* each county shall, at the time of delivering the completed assessment book to the county clerk under the provisions of section 84-505, R.C.M. 1947, also deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in his county, the total assessed value and the total taxable value of all property in such districts,

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cities or towns, as these valuations appear in such completed assessment book.

The county clerk shall, after the second Monday in August and before or at the time of delivering the assessment book to the *department of revenue or its agent* under the provisions of section 84-4006, R.C.M. 1947, prepare a statement showing separately for each district and each city or town in his county, the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in the assessment book after amendments, corrections, and additions made by the state and county *tax appeal boards* and entered on the assessment book. The county clerk shall immediately deliver a copy of his statement of assessed and taxable values for districts to the county superintendent and a copy of those portions of such statement for each city and town to the appropriate city or town clerk.

In the case of a joint school district, the *department of revenue or its agent* and the county clerk shall, at the time of delivering their respective statements to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in their county to the county superintendents and to the county commissioners of each county in which a part of the joint school district is situated."

Section 52. Section 81-928, R.C.M. 1947, is amended to read as follows:

"81-928. **Land subject to taxation.** State lands purchased from the state of Montana shall be subject to taxation to the full value thereof. The *department of revenue* shall assess the purchaser for the full and true value of the land on the first Monday of March following the date of purchase thereof, and provided that the holder of certificates of purchase to lands within irrigation districts shall be liable for the entire tax levied against the land thereunder on account of such irrigation district.

The improvements on the land shall be assessed and taxed as other improvements on farm lands.

On or before the fifteenth (15th) day of March of each year, the commissioner shall furnish the *department of revenue or its agent in* each county with a complete list of all state lands sold in his county during the year ending on the first Monday of March of each year. This list shall show the name and address of the purchaser, give the legal description of the land, and the acreage contained therein."

Section 53. Section 81-930, R.C.M. 1947, is amended to read as follows:

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"81-930. **Lands reverting to state—procedure.** In case any lands sold under the provisions of this act shall revert to the state, for any cause whatsoever, the commissioner of state lands shall notify the *department of revenue* and the county treasurer of the county in which the land is situated, and upon the receipt of such notice it shall be the duty of the *department of revenue* to cancel any assessment of said land for that year, and of the county treasurer to cancel all taxes remaining unpaid against the land for that and all previous years."

Section 54. Section 81-1115, R.C.M. 1947, is amended to read as follows:

"81-1115. **State land equalization payments to counties—list of lands transmitted to** *department of revenue.* The commissioner of state lands and investments for the state of Montana, on or before the first Monday of April of every year, prepare and transmit a statement to the *department of revenue or its agent in* each county in the state of Montana wherein the state of Montana has real property in excess of six per cent (6%) of the total land area of the county and from which the state of Montana derives grazing, agricultural or forest income. The statement shall contain the total number of acres owned by the state in that county and it shall list the acres separately as grazing, agricultural or forest land."

Section 55. Section 81-1116, R.C.M. 1947, is amended to read as follows:

"81-1116. **Computation of state land equalization payment.** The *department of revenue* shall compute the amount of taxes which would be payable on the county assessments of said property as if it were owned by, and taxable to, a taxpayer of such county; provided that, if the land is not classified, the sum to be listed shall be determined by the average tax payment made on like property within the county where said land is situated, not to exceed twelve cents ($.12) per grazing acre, thirty-five cents ($.35) per agricultural acre, and twelve cents ($.12) per forest acre. The average tax may be derived from the most recent biennial report of the state *department of revenue.* The total figure arrived at by this method shall be called the gross assessment figure. The county exemption factor shall be determined by dividing the percentage the state owned land bears to the total land area of the county into six per cent (6%). This quotient shall be multiplied by the gross assessment figure and the product is called the state exemption figure. The state exemption figure shall be subtracted from the gross assessment to give the state land equalization payment."

Section 56. Section 81-1117, R.C.M. 1947, is amended to read as follows:

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"81-1117. **Form to be completed by** *the agent of the department of revenue*—**method of computation shown.** The commissioner of state lands and investments shall provide a form to be followed and completed by the *agent of the department revenue in each county.* The *agent* shall, on or before the first day of October, follow the form of the commissioner and make the computations required and shall submit to the commissioner the completed form which shall show the computations and method used in arriving at the state land equalization payment."

Section 57. Section 81-1118, R.C.M. 1947, is amended to read as follows:

"81-1118. **County statement on equalization payments examined by commissioner—claim filed with controller.** The commissioner of state lands and investments shall examine the statement returned by the *agent of the department of revenue* for accuracy, and in no case shall the state land equalization payment be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The commissioner of state lands and investments shall, on or before November 1 of each year, prepare and file a claim with the state controller for all counties who are eligible for state land equalization payments, and this claim shall show the amount of money each eligible county will receive."

Section 58. Section 82-1501, R.C.M. 1947, is amended to read as follows:

"82-1501. **State board of hail insurance—creation and powers insurance, how effected.** (1) There is hereby created a state board of hail insurance of five members consisting of the state treasurer, and the commissioner of agriculture, labor and industry, who will be secretary of state board, and three other members to be appointed by the governor from the names submitted therefor by the duly organized farmer societies having a general membership throughout the state. The governor shall designate one of said appointive members to serve for three years to act as chairman of the board, one to serve for a term of two years, and one to serve for a term of one year. Whenever the term of any member shall expire, either by death, resignation, or removal for cause, or expiration of his term of office, the governor shall appoint his successor, and shall also appoint one of the board for chairman in case of a vacancy in that office.

(2) Each appointive member of the board shall be appointed for three years, except where such appointment is made to fill a vacancy on the board, in which event such appointee shall fill out the unexpired term of the member whose place he fills. All

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members of the board shall be subject to removal for cause by the governor; the said board shall hold meetings when necessary and essential for the proper conduct of its business, at the state capitol in the office of the secretary, and is hereby authorized, directed and empowered to make such rules and regulations as it may from time to time find practical, necessary and beneficial for the conduct of the department of hail insurance, subject to the provisions of this act. It shall have full charge of said department as herein provided for; it shall prepare blank forms for all purposes necessary, proper and incidental to the effective operation and enforcement of this act, and furnish such forms to all public officers respectively charged with the performance of any official duty in connection therewith; it shall prepare a special form outlining the purposes, scope and benefits of this act in furnishing protection against loss by hail, at the actual cost of the risk to all taxpayers who may elect to become subject to the provisions of this act, such form to be submitted by the *agent of the department of revenue in* each county at the time in which the regular assessments of property are by such *agents* made, to each farmer in each county in the state engaged in growing crops subject to injury or destruction by hail, on which forms each such farmer taxpayer shall signify whether he desires to become subject to the provisions of this act or not.

(3) Every such farmer taxpayer who signifies his desire to become subject to the provisions of this act, shall file in the office of the county assessor the blanks above referred to, properly filled out not later than August 15th, and shall be chargeable with the tax on lands growing crops subject to injury or destruction by hail, hereinafter provided for, and shall share in the protection and benefits under the hail insurance provisions of this act. Such application for hail insurance shall be in full force and effect at noon the day following the acceptance of the same by the county assessor. Provided, however, that this act shall not be so construed as to empower anyone except the actual owner of the land to make such land subject to the hail tax provided in this act."

Section 59. Section 82-1506, R.C.M. 1947, is amended to read as follows:

"82-1506. **Tax for hail insurance—limitation on levy—liens, effect of—mortgages—levies, when payable—hail insurance districts —rates.** (1) A tax is hereby authorized and directed to be levied on all lands in this state growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this act. The state board of hail insurance shall annually estimate as near as may be possible, the amount

required to pay all losses, interest on warrants and costs of administration, and shall recommend a levy to be made on each kind of land respectively, subject to the provisions of this act, to the state *department of revenue.* The rates recommended to apply on the lands of owners shall be applied in the same proportions to the crops of those insured on a personal assessment basis. It is hereby provided, however, that such tax shall not exceed in any one (1) year the sum of one dollar and twenty cents ($1.20) per acre on lands sown to grain crops on nonirrigated lands, and the sum of two dollars and forty cents ($2.40) per acre on irrigated lands, also it shall not exceed one dollar and twenty cents ($1.20) per acre on lands producing hay crops; and provided further, that if the tax required to pay the estimated losses, interest on warrants and costs of administration be less than sixty cents (60¢) per acre on lands sown to grain crops on nonirrigated lands and one dollar and twenty cents ($1.20) per acre on irrigated lands, and a proportionate amount on lands sown to hay crops, the said board of hail insurance must recommend a tax levy sufficient to raise the full amount thereof.

(2) In addition to the lien created above on the land of the insured, the levy for such hail insurance shall also constitute a lien on the crops insured with the exception that the said crop lien shall not apply to owners of unencumbered land, or on the land or crops of those who pay cash for hail insurance. The applications of these shall not be filed with the county clerk and recorded as provided for in section 82-1503.

The crop lien mentioned above shall be included in all applications for hail insurance and shall be enforced, as provided in sections 82-1509 and 82-1510, against all insured, except those owning unencumbered land or those who have paid cash for hail insurance.

(3) The *state department of revenue* is hereby empowered and it is made its duty to prescribe such levies annually to be made against lands growing crops subject to injury or destruction by hail which are subject to this act, in accordance with the recommendation of the state board of hail insurance. Such tax levies respectively shall be chargeable to the lands of each taxpayer who shall elect to become subject to this act and shall be extended on the tax roll and collected by the officers charged with such duties in the manner and form as are other property taxes and if not paid shall be a lien on the lands against which the same are levied as are other property taxes. Provided, however, that the lien as provided above shall in no way affect mortgages that are of record at the time of the approval of this act. The lien of any mortgage filed subsequent to the passage and approval of this act shall be subsequent to any lien for hail insurance hereafter levied thereon. All applicants securing hail insurance on crop

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liens as heretofore provided shall be subject to the same charges per acre as provided herein to be made on land. Notice of such assessment shall be mailed to each person insured, by the county treasurer in the same manner as are all other notices of taxes due. Said assessment shall be payable at the office of the county treasurers of each respective county. All insurance levies whether levied against land or in the form of special assessments secured by crop liens, shall be payable in full, and not in semiannual payments, on or before November 30th of each year in which such levies are made.

(4) The state board of hail insurance may when they deem it advisable establish as many districts as it deems advisable and may maintain maximum rates in various parts of the state which rates shall be commensurate with the risk incurred as nearly as they can determine from past experiences or from any records available. The highest of these rates shall be the same as the maximum established herein and the lowest shall not be less than forty-eight cents (48¢) per acre on lands sown to grain crops, and a proportionate amount on lands sown to hay crops.

Notice of the various rates established for any year shall b(plainly printed on the application for hail insurance, and in any year when the requirements of the hail insurance law as herein provided do not require a levy of the maximum rates as established, then the rates for the year shall be determined and levied by the state board of hail insurance for each of the various districts as established, in such proportions as will in their judgment be fair and equitable."

Section 60. Section 82-1512, R.C.M. 1947, is amended to read as follows:

"82-1512. **Duty of** *agent of the department of revenue*—**election of benefits of law.** It shall be the duty of *the agent of the department of revenue in* each county in the state, at the time in which the annual assessment of property is made, to explain to each taxpayer engaged in the growing of crops subject to injury or destruction by hail, the provisions of this act and the protection afforded thereby, and to request each such taxpayer to certify, on the forms provided for such purposes, if such taxpayer desires to become subject to this act and liable for the tax levies provided hereby, and thereby eligible to the benefits and protection of this act; and each such taxpayer who so elects to become subject to this act shall be liable for the taxes levied for hail insurance, and shall participate in the benefits and protection afforded by this act; provided, that the owners of lands worked by others under lease or contract shall elect if such lands shall be subject to the tax levies herein provided for, and the crops grown

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thereon protected for hail insurance, or the lessee of such land may tender payment of the tax levied for hail insurance to protect his crops, in cash, to the officer authorized to receive same, whereupon such crops shall become eligible to the benefits and protection afforded by this act for hail insurance."

Section 61. Section 82-1925.1, R.C.M. 1947, is amended to read as follows:

"82-1925.1. **State** *department of revenue* **to determine residency of contractor—endorsement upon license—application for redetermination of residency—furnishing lists—***department's* **determination as prima facie evidence.** It shall be the duty of the state *department of revenue* of the state of Montana, at the time that a public contractor makes application for a license under the provisions of chapter 35, Title 84 of this code, to determine whether or not such contractor is a "resident" of the state of Montana within the meaning of sections 82-1924 and 82-1925. The *department* shall endorse upon the contractor's license whether or not such contractor is a "resident" as aforesaid. If a contractor is not a "resident" at the time such license is issued, but thereafter qualifies as such, he may apply to the *department of revenue* for a redetermination of his residency, and, if found to qualify as a "resident," the *department* shall endorse such fact upon his license, together with the date of such qualification. It shall be the duty of the state *department of revenue,* upon written request of any board, commission, officer or individual charged by law with the responsibility for the execution of any contract subject to the provisions of section 82-1924 on behalf of the state, board, commission, political subdivision, agency, school district or public corporation of the state of Montana, to furnish a list of contractors who have qualified as "residents," as aforesaid, to such requesting body. The determination of the *department of revenue* that a public contractor is or is not a "resident" within the meaning of sections 82-1924 and 82-1925 shall be prima facie evidence of such fact."

Section 62. Section 82A-1801, R.C.M. 1947, is amended to read as follows:

"82A-1801. **Department of revenue—creation—head.** There is created a department of revenue. The department head is the *director of revenue.*"

Section 63. Section 82A-1803, R.C.M. 1947, is amended to read as follows:

"82A-1803. *Advisory council for multi-state tax compact.* The *director of revenue* shall appoint an advisory council for the purpose of complying with article VI, section 1(b) of the multi-state

tax compact, section 84-6701, R.C.M. 1947. The council shall be appointed in accordance with the provisions of section 82A-110 of this act."

Section 64. Section 82A-1804, R.C.M. 1947, is amended to read as follows:

"82A-1804. **Director of revenue—creation.** (1) There is created the position of director of revenue.

(2) The director is the chief administrative officer of the department and in addition shall prepare revenue estimates of state revenue from all sources and shall continuously study fiscal problems and tax structures of state and local governments and submit the studies to the governor and legislative assembly at their request.

(3) The director of revenue shall be appointed and serve as provided for directors in section 82A-106 of this act."

Section 64.1 There is a new section to be numbered 82A-1808, R.C.M. 1947, which reads as follows:

82A-1808. State tax appeal board—appeals concerning liquor and beer laws. Any interested party shall have the right to appeal any decision of the department of revenue concerning the issuance, transfer, suspension or revocation of beer or liquor licenses to the state tax appeal board. The appeal shall be heard in conformity with the provisions of the Montana Administrative Procedure Act and the decision of the state tax appeal board shall be final unless reversed or modified upon judicial review.

Section 65. Section 89-1812, R.C.M. 1947, is amended to read as follows:

"89-1812. **Collection of taxes or assessment.** On or before the third Monday in August of each year the board of commissioners shall furnish the *agent of the department of revenue* in each county in which any of the lands of the district are situate, a correct list of all the district lands in such county, together with the amount of the total taxes or assessments against said lands for district purposes. The *agent of the department of revenue in* each county shall immediately thereafter cause said assessment roll to be entered in the assessment book of said county for each year, and prior to the delivery of the assessment book to the county treasurer. The county treasurer of each county shall collect such taxes or assessments in the same manner and at the same time as county and state taxes."

Section 66. Section 89-2401, R.C.M. 1947, is amended to read as follows:

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"89-2401. **District taxes—how certified and collected.** On or before the third Monday in August of each year the commissioners shall certify to the *agent of the department of revenue in* each county wherein the lands of the district are situate, a correct list of all the district lands in such county and the owners thereof, together with a statement of the amount of the total tax or assessment against said lands for district purposes for that year. The *agent of the department of revenue in* each county shall immediately thereupon cause said assessment roll to be entered in the assessment book of said county for each year and prior to the delivery of the assessment book to the county treasurer. The county treasurer of each county shall collect such taxes or assessments at the same time and in the same manner as county and state taxes."

Section 67. Section 91-502, R.C.M. 1947, is amended to read as follows:

"91-502. **Title to escheated property vests in state — when.** Whenever the title to any property, either real or personal, or mixed, fails for any reason including want of heirs or next of kin, such title shall vest in the state of Montana immediately upon the death of the owner without an inquest or other proceeding in the nature of office found, and there shall be no presumption that such owner died leaving heirs or next of kin; provided that in relation to property other than estates, title shall be presumed to have failed whenever the owner, beneficial owner, or person entitled to any such property within this state has been or shall be and remain unknown for a period of twenty (20) successive years, and during such period whenever the whereabouts of such owner, beneficial owner or persons has been or shall be and remain unknown, and during such period whenever any personal property wherever situated has been or shall be and remain unclaimed, then, in such event, such personal property shall escheat to the state.

All sums escheated under the provisions of the Escheated Property Act shall be delivered by the state *department of revenue* to the state treasurer and deposited by the treasurer in the agency fund; in connection with the recovery of money or property from escheats other than those from estates, the state *department of revenu* is hereby authorized and directed to deduct the costs incurred in reducing such moneys or property to the possession of the state of Montana, which sum shall not exceed five per centum (5%) of the amount so recovered, except for such other costs and fees as the judgment of escheat shall so direct.

Moneys and properties placed in the agency fund shall be held in trust for a period of ten (10) years prior to deposit in the pub-

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lic school subfund in the trust and legacy fund by the state treasurer; such ten (10) year period being a time within which the owner, beneficial owner, or any person having a right, title, or interest in the property or money escheated may make claim by the institution of an action for the dissolution of the trust in an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state.

In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the attorney general or his assistant to obtain discovery on motion in the district court requiring any such person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat, or any other information pertinent to the recovery of such property by the state of Montana or which information may lead to the discovery of such escheatable property."

Section 68. Section 91-504, R.C.M. 1947, is amended to read as follows:

"91-504. **Investment and disposition of money and property.** The moneys thus deposited may, upon order of the court or judge, be invested, pending the proceedings, in securities of the United States, or of this state, when such investment is for the best interests of the estate. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the public administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall keep an account with such estate of all moneys received and paid to him, and the county treasurer shall forthwith remit all of said money to the state *department of revenue* with a statement as to the estates to which the money belongs. The *department* shall immediately deliver such money to the state treasurer who shall thereupon deposit such money so received by him in the agency fund of the state of Montana."

Section 69. Section 91-505, R.C.M. 1947, is amended to read as follows:

"91-505. **Unsold personal property, how disposed of—auction sale.** If the personal property in an estate was not sold by the executor or administrator at the final settlement of the estates as by law provided, then it shall be the duty of such executor or administrator to turn over all of such property to the county treasurer, who in turn shall deliver it to the state *department of revenue* with a statement setting forth the name of the estate to which it belongs, and the state *department of revenue* must within

one (1) year of the receipt of such property cause the same to be sold to the highest bidder at a public auction sale, at the *department's* office in Helena, Montana. The state *department of revenue* shall give notice of such sale by publication in a newspaper published in the city of Helena, Montana, once a week for two (2) successive weeks, making in all two (2) publications, the last publication to be at least twenty (20) days prior to the date of such sale. Such notice shall give the time and place of such sale and shall contain a list and description of the stocks, bonds, securities, effects, or other personal property to be sold. All of the expenses of such sale shall be deducted from the proceeds thereof by the state *department of revenue* and the balance of such proceeds shall be delivered by the *department* to the state treasurer for deposit in the agency fund of the state of Montana."

Section 70. Section 91-506, R.C.M. 1947, is amended to read as follows:

"91-506. **Unsold real property, how disposed of—auction sale.** If the real property was not sold by the executor or administrator or public administrator at the final settlement of the estate as by law provided, then it shall be the duty of the executor or administrator or public administrator to make and execute to the state of Montana an executor's or administrator's deed and to deliver the same to the county clerk and recorder of the county wherein such real property is situated, and it shall then become the duty of the county clerk and recorder to file and record said deed, without charge, and after being so recorded the county clerk and recorder shall mail the said deed to the state *department of revenue* which shall make a record thereof and deliver the deed to the state board of land commissioners. Within one (1) year after the receipt of such recorded deed the state board of land commissioners shall cause such property to be sold to the highest bidder at public auction sale, to be held at the courthouse in the county where such real property or any part thereof is situated. The state board of land commissioners shall give notice of such sale by publication in a newspaper published in the county wherein such real estate or any part thereof is situated once a week for two (2) weeks, making in all two (2) publications, the last publication to be least twenty (20) days prior to the date of such sale. Such notices shall give the time and place of such sale and contain a description of the real property to be sold. All expenses of such sale shall be deducted by the state board of land commissioners from the proceeds thereof and the balance of such proceeds shall be turned over to the state treasurer who shall deposit the same in the agency fund of the state of Montana. The board of land commissioners shall provide the state *department of revenue* with a statement indicating the sale price, expenses and net proceeds resulting from each such sale."

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Section 71. Section 91-507, R.C.M. 1947, is amended to read as follows:

"91-507. **Unclaimed personal property in hands of agent — disposal.** Whenever the personal property in an estate remains in the hands of an agent, unclaimed for two (2) years and it appears to the court or judge that it is for the best interests of the estate and those interested therein, such property shall be sold under the order of the court or judge and the proceeds, after deducting the expenses of the sale allowed by the court or judge, must be paid to the state *department of revenue* for deposit into the state treasury, and upon receipt of such proceeds it shall be the duty of the state treasurer to deposit the same in the agency fund of the state of Montana."

Section 72. Section 91-508, R.C.M. 1947, is amended to read as follows:

"91-508. **Sales by state** *department of revenue,* **how conducted.** All hereinafter mentioned sales by the state *department of revenue* must be at public auction at the *department's* office. Said sales must be for cash and shall be made to the highest bidder, provided, however, that the *department* may reject all bids which are disproportionate to the value of the property being sold."

Section 78. Section 91-509, R.C.M. 1947, is amended to read as follows:

"91-509. **Court action by claimant of property in hands of state treasurer — limitation of action — judgment.** Any persons claiming property in the hands of the state treasurer must bring an action in the district court of Lewis and Clark county, Montana, against the state treasurer. In such action one copy of the complaint and summons must be served upon the state treasurer, one must be served upon the attorney general and one must be served upon the *director of revenue.*

Such action shall be prosecuted subject to all of the provisions of the statutes of this state in relation to civil actions generally, including the right of either party to appeal to the supreme court of the state of Montana. Such action must be brought within two (2) years from the date on which the money or property is received by the state treasurer, saving, however, to infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or two (2) years after their respective disabilities cease.

The judgment of the court in such action shall determine and fix the amount of inheritance tax, if any, which is due from

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said claimant to the state of Montana upon the money or property claimed and none of said money or property shall be turned over to said claimant until said inheritance tax is paid. The state *department of revenue* shall issue its interlocutory certificate showing the amount of said inheritance tax due, if any, and shall have the right to file objections and be heard upon the final determination of said tax."

Section 74. Section 91-523, R.C.M. 1947, is amended to read as follows:

"91-523. **Disposition of money.** All money, including that realized from the sale or sales of property delivered to the county by an executor or administrator, under the provisions of this act shall, immediately upon its receipt by the county treasurer be delivered to the state *department of revenue* which shall immediately deliver same to the state treasurer and by him deposited in the agency fund of the state of Montana."

Section 75. Section 91-4321, R.C.M. 1947, is amended to read as follows:

"9-4321. **Termination of life estate or joint tenancy.** (1) When the death of a person terminates a life estate or affects a joint tenancy any person interested in the property or in the title thereto, in which such life estate was held, or such joint tenancy existed, may file in the district court of the county in which the property, or some part thereof, is situated, his verified petition, setting forth such facts and particularly describing the property and his interests therein, and naming all persons who claim or might claim an interest therein as personal representative, heir, devisee or legatee of the decedent, so far as known to the petitioner.

(2) The clerk shall thereupon set the petition for hearing by the court and give notice thereof by causing notice of the time and place of hearing to be posted in three public places in the county where the court is held, at least ten (10) days before the hearing and provided the court may order such further, or other, notice to be given, as in his judgment may seem proper.

(3) The court or the judge shall hear such petition, and the evidence offered in support thereof, and if, upon such hearing, it shall appear that such life estate of such deceased person absolutely terminated by reason of his death, or that such joint tenancy was affected by the death of such deceased person, the court or judge shall make an order to that effect, and thereupon a certified copy of such order may be recorded in the office of the county clerk of each county in which any part of the property is

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situated, and thereafter shall have the same effect as a final order of distribution so recorded.

(4) If no proceeding has been had or is pending to determine whether any inheritance tax is payable by reason of such death, the court or judge may determine in a proceeding under this section whether an inheritance tax is due by reason of the death of such person, and the amount thereof, if any. If it is desired to have the court or judge determine the liability for inheritance tax, and the amount thereof, appropriate allegations to that effect shall be included in the petition, and a copy of such petition, and notice of the time and place of hearing, shall be mailed to the state *department of revenue* by the clerk of the court, at least ten (10) days before the date set for hearing."

Section 76. Section 91-4414.1, R.C.M. 1947, is amended to read as follows:

"91-4414.1. **Discretionary waiver of inheritance tax of surviving spouse.** Notwithstanding any provision of law or statute in conflict herewith, the state *department of revenue,* in its discretion, is authorized to issue a waiver of inheritance tax in the event of the death of any person leaving any real property or personal property, or both, in joint tenancy with a surviving spouse if the value of the property of the decedent is less than the inheritance exemption allowed by law to the surviving spouce."

Section 77. Section 91-4415, R.C.M. 1947, is amended to read as follows:

"91-4415. **When payment due—lien of tax—liability for payment—receipts—receipt or bond required before final accounting allowed.** All taxes imposed by this act shall be due and payable at the time of the death of the decedent, except as hereinafter provided; and every such tax shall be and remain a lien upon the property transferred for a period of ten (10) years from the time of the death of the decedent, whether said death occurred before or after the effective date of this act, unlss sooner paid, and the person to whom the property is transferred and the administrators, executors, and trustees of every estate so transferred shall be personally liable for such tax until its payment.

The tax shall be paid to the state *department of revenue* for transmittal to the state treasurer or to the treasurer of the county in which the district court is situated having jurisdiction as herein provided, and if paid to the county treasurer said treasurer shall receipt therefor, making five copies thereof, and distribute said copies as follows: Original receipt, to the clerk of the district court; first copy, to the executor, administrator,

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trustee, or person paying said tax; second copy, attached to and mailed with the report required by section 91-4450, as amended, to the state *department of revenue*; third copy, to the county clerk and recorder; fourth copy, retained by the treasurer on file in his office. The copy of the receipt given to the executor, administrator, or trustee shall be a proper voucher in the settlement of his account.

No executor, administrator, or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce such receipt of a certified copy thereof or unless a bond shall have been filed as prescribed by section 91-4419."

Section 78. Section 91-4418, R.C.M. 1947, is amended to read as follows:

"91-4418. **Refunding of tax—when authorized—manner of refunding—advance payment of tax for relief from penalty and interest.** If any debt shall be proved against the estate of the decedent, after the payment of any legacy or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required by the order of the district court having jurisdiction of the tax so deducted or paid, to refund the amount of such debts or any part thereof, an equitable proportion thereof shall be repaid to such person by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proprotionate shares, if it has been so paid.

Any person from whom such tax is or may be due may make an estimate of and pay the same to the clerk of court, who shall receipt therefor, at any time before the same is determined by the court, and shall thereupon be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined. In the event the person making payment has done so in accordance with the provisions of section 91-4416, pertaining to the allowance of a five per cent (5%) discount, the person making payment shall be relieved from any interest or penalty and shall be allowed the five per cent (5%) discount upon the amount which he so declared due as his inheritance tax liability. The tax may be declared to be due by the filing with the clerk of court of a statement of such declaration or by paying the amount estimated by the taxpayer to be due. The money shall be paid to the clerk of the district court who must deposit same with the county treasurer. The county treasurer shall include such collections in the next payment he makes to the state *depart-*

ment of revenue pursuant to section 91-4450. As soon as the correct amount of inheritance tax has been determined, any excess so paid shall be refunded to the person so paying or entitled thereto by the state *department of revenue* based upon the filing of a properly documented claim by the clerk of court."

Section 79. Section 91-4419, R.C.M. 1947, is amended to read as follows:

"91-4419. **Bond for deferred payment of tax.** Any beneficiary of any property chargeable with a tax under this act, and any executors, alministrators and trustees thereof, may elect, within eighteen months from the date of the death of decedent or transfer thereof as herein provided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. The person or persons so electing shall give a bond to the state in a penalty of three times the amount of any such tax, with such sureties as the district court of the proper county or the state *department of revenue*, as the case may be, may approve, conditioned for the payment of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the district court, or in the office of the state treasurer as the case may be. Such bond must be executed and filed and a full return of such property upon oath made to the district court within eighteen months from the date of the death of decedent or transfer as herein provided, and such bond must be renewed every five years, and said deferred tax shall bear interest at six per cent per annum after such eighteen months."

Section 80. Section 91-4421, R.C.M. 1947, is amended to read as follows:

"91-4421. **Payment of tax on transfer of securities by foreign representative—duty of holder of securities or assets of nonresident decedent—apportionment of deductions—information to be given** *department of revenue*—**amount of tax to be retained on delivery of assets—penalties.** (1) If a foreign executor, or administrator, or trustee shall assign or transfer any stocks, bonds, mortgages, or other securities, in this state, or within the jurisdiction of this state, standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state treasurer on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax.

(2) No safe deposit company, bank, or other institution, person or persons, holding securities or assets of a nonresident

decedent, nor any corporation organized under the laws of this state, in which a nonresident decedent held stock, bonds, mortgages, or other securities, at his decease, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the state *department of revenue* at least ten (10) days prior to the said transfer; nor shall any such safe deposit company, bank, or other institution, person or persons, nor any corporation, deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the state *department of revenue,* personally or by representative, to examine said securities or assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank, or other institution, person or persons, or such corporation, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws. The state *department of revenue* may issue a certificate authorizing the transfer of any such stock, securities or assets whenever it appears to the satisfaction of the said board that no tax is due thereon; provided, however, that the foregoing provisions shall not apply to shares of stock in any Montana corporation held by a nonresident of Montana at the time of his death whose death occurred on or after January 30, 1945, and who was at the time of his death domiciled in any other district or state of the United States, provided reciprocal rights are granted by such district or state of domicile similar to section 91-4413, and in such event this subsection (2) shall not apply to the transfer of stocks, bonds, mortgages or other securities exempt from taxation under the provisions of section 91-4413, and a Montana corporation, or its agent, may transfer stocks, bonds, mortgages and other securities without any liability for the tax imposed under the provisions of the inheritance tax laws where there are reciprocal rights as set forth in section 91-4413, and in such event no application for consent to transfer such stock need be made to the state *department of revenue* of the state of Montana, and the corporation, or its duly authorized transfer agent may transfer such shares of stock upon its books without any such application or consent to transfer.

(3) Whenever a tax may be due from the estate, or the beneficiaries therein, of any resident or nonresident decedent upon

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the transfer of any property, when the property or the estate left by such decedent is partly within and partly without this state, or upon any stocks, bonds, mortgages, or other securities representing property or estate partly within and partly without this state, and beneficiary of such estate shall be entitled to deduct only his proper proportion of that portion of the total debts and expenses of administration which the gross estate in Montana or within its jurisdiction bears to the gross estate both within and without this state, but no deduction shall be made for any federal estate, inheritance, succession or transfer taxes paid to the United States. As to his Montana exemption, each beneficiary shall be entitled to deduct only that portion represented by the ratio between his interest in the property in this state or within its jurisdiction and his interest in the entire estate.

(4) The state *department of revenue* shall require such reports and information and shall make such orders, rules, and regulations as it may deem necessary to enable the *department* to secure the necessary information from domestic corporations and to ascertain the amount of and collect such tax; and no holding company or other corporation subject to the provisions of this section shall deliver or transfer any such stocks, bonds, mortgages, or other securities of a Montana corporation without retaining a sufficient portion thereof to pay any tax which may thereafter be assessed under the provisions of this act on account of such transfer, except upon order of the proper court or a certificate of consent of the state *department of revenue.*

(5) Any corporation or holding company violating the provisions of this section shall be liable to the state for the amount of the tax together with a penalty of ten per centum (10%) thereof."

Section 81. Section 91-4423, R.C.M. 1947, is amended to read as follows:

"91-4423. **Jurisdiction of district court—notice to** *department of revenue* **required before hearing.** The district court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws, and to do any act in relation thereto authorized by law to be done by a district court in other matters or proceedings coming within its jurisdiction; and if two or more district courts shall be entitled to exercise any such jurisdiction, the district court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other district court.

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Before any decree determining inheritance tax in any estate shall be made by the court, the court shall require proof that due notice has been given to the state *department of revenue* before the hearing upon the petition to have inheritance tax determined, whether such hearing be at the time of the hearing on the final account or otherwise; and the court shall likewise require proof that a copy of such petition has been given to the *department* not later than the time of giving the notice; and, before the time fixed in said notice, said *department* shall cause to be filed, with the clerk of the district court, a certificate signed by the *department* stating that the amount of the inheritance tax determined to be due the state of Montana as appearing in the report or petition, has been properly computed therein or, if no tax is due, such certificate shall so state; and, if the *department* shall object to the amount of the tax so computed, the *department* shall, before the time fixed for the hearing, file with the clerk of the court its written objections thereto, setting forth therein the nature of the objections. If neither such certificate nor objections shall have been filed at the time fixed for the hearing, it shall be conclusively presumed that the *department* concurs in the amount so computed."

Section 82. Section 91-4425, R.C.M. 1947, is amended to read as follows:

"91-4425. **Determination of tax due from estate of nonresident decedent—application—appeals.** (1) Any personal representative, trustee, heir, devisee or legatee of a nonresident decedent leaving no estate requiring administration in this state, desiring to transfer any stocks, bonds, mortgages or other securities, or other personal property in this state or within the jurisdiction of this state, may make application to the state *department of revenue* for the determination whether there is any tax due upon account of the transfer thereof, and the amount of any such tax, and such applicant shall furnish to the state *department of revenue* therewith, an affidavit setting forth a description and statement of the property owned by the decedent situated within this state, or within its jurisdiction at the time of his death, the true value of said property at the time of decedent's death; a description and statement of the true value of all property owned by the decedent at the time of his death situated outside of this state, and without its jurisdiction; and containing a schedule or statement of all valid claims against the estate of the decedent, including the expenses of his last illness, funeral expenses and expenses of administering his estate. Such applicant shall also, at the same time, furnish the state *department of revenue* with a certificate copy of the last will of the decedent, in case he died testate, or an affidavit setting forth the names, ages, and residence of the heirs at law of decedent in case he died intestate, and the proportion of the entire estate of said

decedent inherited by each of said persons, and the relation, if any, which each legatee, devisee, heir, or transferee sustained to the decedent, or person from whom the transfer was made. Such affidavit shall be subscribed and sworn to by the personal representative of the decedent, or some other person having knowledge of the facts therein set forth.

(2) The statement contained in any affidavits, statements or schedules as to values, or otherwise, shall not be binding upon the state *department of revenue* in case they believe the same to be erroneous or untrue. From the information so furnished them and such other information as they may be able to obtain with reference thereto, the state *department of revenue* shall, with reasonable diligence, proceed to ascertain and determine the amount of tax, if any, due under the provisions of this act, and notify the person making the application of the amount of the tax so ascertained and determined to be due; or in case there is no tax to be paid, the state *department of revenue* shall issue a consent to the transfer of the property so owned by the decedent.

(3) Any person aggrieved by the determination of the state *department of revenue* in any matter herein provided for in this section may, within thirty (30) days thereafter, appeal to the district court of Lewis and Clark county, by serving on the state *department of revenue* a notice in writing setting forth his objections to such determination, and by filing such notice, after so serving the same, in the office of the clerk of such court, and thereupon, and within ten (10) days after the service of such notice on them the state *department of revenue* shall transmit full and complete copies of all original papers and records which have been filed with them in relation to such application, to the clerk of said district court, and thereupon the said district court shall have jurisdiction of such application and proceeding. Upon ten days' notice given by either applicant or the state *department of revenue,* the matter may be brought on for hearing and determination by said court, either in term time or in vacation, at a general or special term of court, or at chambers, as may be directed by the order of the court."

Section 83. Section 91-4426, R.C.M. 1947, is amended to read as follows:

"91-4426. **Determination when application not made.** Whenever any nonresident decedent, leaving no estate requiring administration in this state, shall leave any stocks, bonds, mortgages, or other securities, or other personal property within the state or within the jurisdiction thereof, and no personal representative, trustee, heir, devisee, or legatee of such nonresident decedent has made application to the state *department of revenue* for the deter-

mination as to whether there is any tax due for the transfer thereof and the amount of such tax, if any, the state *department of revenue,* upon such matter being called to its attention, shall make an order, and cause a copy thereof to be served upon the personal representative, trustee, heirs, devisees or legatees of such nonresident decedent, ordering and directing that a statement and return, under oath, containing the statements and information prescribed in section 91-4425, be filed with such board within sixty (60) days from the date of such order, or within such further time as the state *department of revenue* may grant therefor; and if such statement is not filed with the state *department of revenue* within such time the state *department of revenue* may then procure such information in any manner it may deem advisable. Upon the filing of such statement, or the procuring of such information by the state *department of revenue* in the event of a failure to file the same in compliance with such order, the state *department of revenue* shall proceed in the same manner as prescribed by section 91-4425, and all provisions thereof with reference to hearings and appeals shall be applicable thereto."

Section 84. Section 91-4427, R.C.M. 1947, is amended to read as follows:

"91-4427. **Special appraiser.** The district court, upon the application of any interested party, including the state *department of revenue,* shall appoint a competent person as special appraiser to fix the fair market value at the time of the transfer thereof of the property of persons whose estate shall be subject to the payment of any tax imposed by this act."

Section 85. Section 91-4428, R.C.M. 1947, is amended to read as follows:

"91-4428. **Duties, powers and compensation of appraisers.** Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state *department of revenue,* and to such persons as the district court may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value, as herein prescribed; and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said district court, together with the depositions of the witnesses examined, and such other facts in relation thereto and to the said matter as the said district court may order or require. Every appraiser shall be

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paid on the certificate of the district court at the rate of not to exceed ten dollars ($10.00) per day for every day actually and necessarily employed in such appraisal, and shall receive his actual and necessary traveling expenses, and witnesses shall be allowed the same fees as are allowed witnesses in civil actions in courts of record and the same shall be paid by the executor, administrator or trustee of such estate in the same manner as provided for the payment of other administration expenses."

Section 86. Section 91-4429, R.C.M. 1947, is amended to read as follows:

"91-4429. **Hearing by the court.** The report of the special appraiser shall be made in triplicate, and not less than ten (10) days before the hearing thereon one of said triplicates shall be filed in the office of the district court, one to the administrator or the executor, and the other shall be mailed to the state *department of revenue.* At the time and place of hearing the administration account, the district court shall examine such report, and from the report and other proofs relating to any such estate shall forthwith determine the cash value of such estate and the amount of tax to which the same is liable; or, the district court without appointing such appraiser may at the time so fixed hear the evidence and determine the cash value of such estate and the amount of tax to which the same is liable."

Section 87. Section 91-4430, R.C.M. 1947, is amended to read as follows:

"91-4430. **Notice of hearing.** Notice of such hearing to determine the inheritance tax shall be given in the same manner and may be included in the notice of hearing the administration account, as provided by law. A copy of the application for exclusion of any property to avoid inheritance tax thereon shall be given with notice of hearing thereof, and notice of any such hearing shall be mailed to the state *department of revenue* not less than fifteen (15) days before such hearing, upon notice forms provided by *the department* and containing such information as it may require."

Section 88. Section 91-4431, R.C.M. 1947, is amended to read as follows:

"91-4431. **Commissioner of insurance to value future estates, etc.** The commissioner of insurance shall, on application of any district court or of the state *department of revenue,* determine the value of any such future or contingent estates, income, or interests therein limited, contingent, dependent, or determinable upon the life or lives of the person or persons in being, upon the facts con-

tained in the district court's finding and determination and contained in such special appraiser's report, and upon the facts certify the same to the district court or to the state *department of revenue,* and his certificate shall be presumptive evidence that the method of computation adopted therein is correct."

Section 89. Section 91-4437, R.C.M. 1947, is amended to read as follows:

"91-4437. **Order determining tax—contents.** Upon the determination by the district court of the value of any estate which is taxable under the inheritance tax laws, and of the tax to which it is liable, an order shall be entered by the court determining the same, which order shall include a statement of (a) the date of death of the decedent, (b) the gross value of the real and personal property of such estate, stating the principal items thereof, (c) the deductions therefrom allowed by the court, (d) the names and relationship of the persons entitled to receive the same, with the amount received by each, (e) the rates and amounts of inheritance tax for which each such person is liable, and the total amount of tax to be paid, (f) a statement of the amount of interest or penalty due, if any. Such order shall be substantially in the form prescribed by the state *department of revenue.* A copy of the same shall be delivered or mailed to the county treasurer, the administrator or executor, and the state *department of revenue,* and no final judgment shall be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed, and receipts are filed with such court showing the payment of all such taxes, or proof is filed showing that the bond authorized by section 91-4419 has been given."

Section 90. Section 91-4438, R.C.M. 1947, is amended to read as follows:

"91-4438. **Rehearing within sixty days.** The attorney general, state *department of revenue,* public administrator, county attorney, or any person dissatisfied with the appraisement or assessment and determination of such tax may apply for a rehearing thereof before the district court within sixty (60) days from the fixing, assessing and determination of the tax by the district court as herein provided on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proofs had and taken on the hearing as herein provided unless additional or newly discovered evidence be alleged therefor, and a new trial shall not be had or granted unless specially ordered by the district court."

Section 91. Section 91-4439, R.C.M. 1947, is amended to read as follows:

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"91-4439. **Reappraisement in the district court within one year.** Within one year after the entry of an order or decree of the district court determining the value of an estate and assessing the tax thereon, the attorney general or the state *department of revenue* may, if he (or they) believes that such appraisal, assessment, or determination has been erroneously, fraudulently or collusively made, make application to the district judge for a reappraisal thereof. The district court to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties, shall give the notice and receive the compensation provided by sections 91-4428 to 91-4439, inclusive. Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of this act, upon the certificate of the district judge. The report of such appraiser shall be filed in the office of the clerk of the district court, and thereafter the same proceedings shall be taken and had by and before such district court as herein provided to be taken and had by and before the said court. The determination and assessment of such district court shall supersede the former determination and assessment of such court, and shall be filed in the office of the county treasurer, state treasurer, and state *department of revenue.*"

Section 92. Section 91-4440, R.C.M. 1947, is amended to read as follows:

"91-4440. **Collection of unpaid taxes.** If any county treasurer, state treasurer, or the state *department of revenue* shall have reason to believe that any tax is due and unpaid under the provisions of this act, after the refusal or neglect of any person liable therefor to pay the same, he or they, shall notify the attorney general in writing of such failure or neglect, and the attorney general, if he have probable cause to believe that such tax is due and unpaid, shall apply to the district court for a citation citing the person liable to pay such tax to appear before the court on the day specified, not more than three months from the date of such citation, and show cause why the tax should not be paid. The judge of the district court upon such application and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation, and the service of such citation and the time, manner and proof thereof, and the hearing and determination thereof, shall conform as near as may be to the provisions of the laws governing probate practice of this state, and whenever it shall appear that any such tax is due and payable, and the payment thereof cannot be enforced under the provisions of this act, in said district court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax, and it shall be the duty of the attorney gen-

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eral, in the name of the state, to sue for and enforce the collection of such tax, and it is made the duty of the county attorney of the county to appear for and act on behalf of any county treasurer, who shall be cited to appear before any district court under the provisions of this act."

Section 93. Section 91-4442, R.C.M. 1947, is amended to read as follows:

"91-4442. **Special administration to determine tax where transfer made in contemplation of death.** Where it appears that the estate of a deceased person subject to the inheritance tax laws was transferred in contemplation of the death of the grantor without the adjustment and payment of the inheritance taxes and no application for such adjustment is made within six months after the demise of such grantor, the public administrator of the proper county shall notify the state *department of revenue* and on its order make application for and shall be entitled to such general or special administration as may be necessary for the purpose of the adjustment and payment of the inheritance taxes provided by law and shall administer such estate the same as other estates are administered as though such estate had not been transferred by the grantor."

Section 94. Section 91-4443, R.C.M. 1947, is amended to read as follows:

"91-4443. **Public administrator's duty to investigate concerning tax—compensation.** It shall be the duty of the public administrator, under the general supervision of the state *department of revenue,* and with the assistance of the county attorney, when required by the *department* or district judge, to investigate the estates of deceased persons within his county and to appear for and act in behalf of the county and state in the district court in such estates as the court may in its discretion deem necessary, and for such services the public administrator shall be entitled to five percent of the gross inheritance tax as determined in each such estate, to be paid by the county treasurer out of the inheritance tax funds upon an order of the district judge, provided that the minimum fee for each such estate shall not be less than five dollars, and that it shall not exceed twenty-five dollars; but in cases of unusual difficulty, in estates of resident decedents, where the tax exceeds five hundred dollars, the district judge may allow the public administrator such additional compensation as he may deem just and reasonable."

Section 95. Section 91-4444, R.C.M. 1947, is amended to read as follows:

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"91-4444. **State** *department of revenue* **to supervise inheritance tax.** It shall be the duty of the state *department of revenue* to supervise the administration of, and to investigate and cause to be investigated the administration of the inheritance tax laws, and such particular estates to which the inheritance tax laws apply throughout the various counties of the state, and to cause to be made and filed in its office reports of such investigation together with specific information and facts as to particular estates that may seem to require special consideration and attention by the legal department of the state; but no information so acquired shall, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate."

Section 96. Section 91-4445, R.C.M. 1947, is amended to read as follows:

"91-4445. **Powers and duties of the** *department.* The state *department of revenue* in the conduct of inheritance tax affairs, shall have the same and similar powers and authority for gathering information and making investigations as is conferred by law on *the department* in the performance of its other duties. The *department* shall biennially report to the governor and to the legislature at the opening of the sessions the general result of its labors and investigations in inheritance tax matters during the previous biennial period, together with specific reports of the several counties where the administration of the inheritance tax laws has been lax and unsatisfactory, with such recommendations for action thereon by the legislature as may be deemed advisable and proper."

Section 97. Section 91-4446, R.C.M. 1947, is amended to read as follows:

"91-4446. **Powers and duties in nonresident estates.** The state *department of revenue* shall also gather information and make investigations and reports concerning the estates of nonresident decedents within the provisions of the inheritance tax laws, and shall especially investigate the probate and other records for such probable estates without the state and report thereon from time to time to the legal department of the state and to the proper district court for appropriate legal action, but no information so acquired shall, in advance of legal action, be disclosed to anyone except proper officials, and persons interested in such estate."

Section 98. Section 91-4447, R.C.M. 1947, is amended to read as follows:

"91-4447. **Duty of legal department of state.** It shall be the duty of the legal department of the state to carry out and enforce the recommendations and directions of the state *department*

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of revenue in all matters pertaining to the conduct of inheritance tax affairs; and in every estate in which the amount of inheritance tax collectable shall exceed or probably exceed the sum of one thousand dollars, there shall be no compounding, composition, or settlement of the taxes under the authority conferred by section 91-4451 or otherwise, until the state *department of revenue* shall have investigated such estate and make a report thereon, nor until the *department* consents to such compounding, compromise, or settlement."

Section 99. Section 91-4448, R.C.M. 1947, is amended to read as follows:

"91-4448. **Forms and blanks.** The state *department of revenue* shall prescribe such forms and prepare such blanks as may be necessary in inheritance tax proceedings in the district courts of the state; and such blanks shall be printed at the expense of the state and furnished to the district court upon the request of the judge or clerk thereof."

Section 100. Section 91-4449, R.C.M. 1947, is amended to read as follows:

"91-4449. **Duties of clerks of district courts.** It shall be the duty of the clerk of the district court to furnish to the state *department of revenue* copies of such documents filed in connection with probate matters as *the department* may require."

Section 101. Section 91-4450, R.C.M. 1947, is amended to read as follows:

"91-4450. **Monthly reports of county treasurer—payment of collections to state** *department of revenue* **— interest on unpaid amounts.** On or before the fifth day of each month each county treasurer shall make a report under oath to the state *department of revenue* listing all payments received by him under the inheritance tax laws, during the preceding month, and stating for what estate, by whom and when paid. The form of such report shall be prescribed by the state *department of revenue.* He shall at the same time pay the state *department of revenue* all the payments received by him under the inheritance tax laws and not previously paid to the state *department of revenue,* and for all such payments collected by him and not paid to the state *department of revenue* within five days from the time herein required, he shall pay interest at the rate of ten per cent (10%) per annum."

Section 102. Section 91-4451, R.C.M. 1947, is amended to read as follows:

"91-4451. **Composition and compromise.** The state *depart-*

ment of revenue is authorized to enter into an agreement with the executor, administrator, or trustee of any estate in which remainders or expectant estates have been of such a nature or so disposed and circumstanced that the taxes therein were held not presently payable or where the interests or the legatees or devisees are not ascertainable under the provisions of this act, or whenever a tax is claimed on account of the transfer of any property of a nonresident decedent, and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said executors, administrators, or trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of such executors, administrators, or trustees as against the interests of such cestui que trust as may possess either present rights or enjoyment or fixed, absolute, or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto either personally when competent or by guardian. Composition or settlement made or effected under the the provisions of this section shall be executed in triplicate and one copy shall be filed in the office of the clerk of the district court of the county in which the tax was paid; one copy to be delivered to the executors, administrators, or trustees, who shall be parties thereto, and one copy to be retained by *the department of revenue.*"

Section 103. Section 91-4454, R.C.M. 1947, is amended to read as follows:

"91-4454. **Employment of assistants by** *department of revenue* and fixing compensation. The state *department of revenue* may employ such other persons as experts and assistants as may be necessary to perform the duties that may be required of the *department* and fix their compensation."

Section 104. Section 91-4455, R.C.M. 1947, is amended to read as follows:

"91-4455. **Hearings by** *department of revenue*—**witness—false testimony as perjury—compensation.** Oaths of witnesses in any matter under the investigation or consideration of the state *department of revenue* may be administered by the *director of revenue or his appointed agents.* In case any witness shall fail to obey any summons to appear before *the department* or shall refuse to testify or answer any material questions or to produce records, books, papers, documents, when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience

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to any summons or order of the *department* or to punish witnesses for any such neglect or refusal. Any person who shall testify falsely in any material manner under the consideration of the *department* shall be guilty of and punished for perjury. In the discretion of the *department,* officers who serve summons or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the district court."

Section 105. Section 91-4459, R.C.M. 1947, is amended to read as follows:

"91-4459. **Checking by county clerk of records and transfers —report to** *department of revenue.* The county clerk, upon the receipt of the list of deaths provided for in section 91-4458, shall immediately check the records of his county to determine whether any of the deceased persons whose names appear upon such list may have made any transfer of property or of property rights within such county during the three years preceding the death of such person or whether such deceased person may have been possessed of any property in such county at the time of his death.

If he shall find that any such deceased person may have made any such transfers of property or of property rights, or have died possessed of such, he shall immediately transmit such information to the state *department of revenue.*"

Section 106. Section 91-4460, R.C.M. 1947, is amended to read as follows:

"91-4460. **County clerk to furnish** *department of revenue* **description of property conveyed within three years of death of grantor.** Wherever any deed conveying real property from husband to wife, or wife to husband, is filed with the county clerk and recorder within three (3) years prior to the date of the death of the grantor, or, at or after the date of death of the grantor, it shall be the duty of the county clerk and recorder to furnish the *department of revenue* with a description of the property so conveyed and the names of the grantor and the grantee."

Section 107. Section 91-4461, R.C.M. 1947, is amended to read as follows:

"91-4461. *Department of revenue* **to appraise said property and certify value.** It shall be the duty of the *department of revenue or its agents* to appraise said property and to certify the appraised value of the property so conveyed on a form to be provided by the state *department of revenue* for this purpose."

Section 108. Section 91-4462, R.C.M. 1947, is amended to read as follows:

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"91-4462. **Form provided to grantee—contents.** The county clerk and recorder, at the time of the filing of said deed, if the deed is filed at or after death, or when informed by the grantee or someone acting on behalf of the grantee of the death of a grantor within the three (3) year period above mentioned, shall furnish the grantee, or one acting on behalf of the grantee, a form to be prepared by the state *department of revenue*, which form shall show the degree of relationship between the grantor and the grantee and such other essential information as the state *department of revenue* may need in order to determine what, if any, inheritance tax may be due to the state of Montana by reason of the transfer of the property so conveyed. Said form shall also contain an affidavit of the grantee setting forth that the grantor died without having any other property necessitating the procuring of letters of administration, or letters testamentary, or special letters for the purpose of terminating joint tenancy and that to the knowledge of the grantee the property was not by will otherwise bequeathed. It shall also contain the name and address of any other heirs of the grantor."

Section 109. Section 91-4463, R.C.M. 1947, is amended to read as follows:

"91-4463. **Certificate of inheritance tax due.** Upon receipt of the report of the *agent of the department of revenue,* and the form and affidavit of the grantee, the state *department of revenue* shall issue to the grantee a certificate stating the amount of inheritance tax determined to be due to the state of Montana by reason of said transfer, or if no tax is due, such certificate shall so state."

Section 110. Section 91-4464, R.C.M. 1947, is amended to read as follows:

"91-4464. **Payment by grantee of inheritance tax due — receipts for payment.** If a tax is determined due by reason of said transfer the grantee shall pay the tax to the county treasurer, who shall make triplicate receipts of such payment, one of which he shall immediately send to the state treasurer, whose duty it shall be to charge the county treasurer so receiving the tax with the amount thereof. One receipt the county treasurer shall keep on file in his office. The other receipt shall be delivered to the grantee, or one acting in his behalf, which, when filed with the county clerk and recorder together with the certificate of the state *department of revenue,* shall be prima facie proof of the payment of any inheritance tax due by reason of said transfer. If the certificate shall determine no tax due by reason of said transfer, the filing of said certificate with the county clerk and recorder shall operate to the same effect. Payment of inheritance tax under this act shall be governed by the provisions of section 91-4416."

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Section 111. Section 94-1506, R.C.M. 1947, is amended to read as follows:

"94-1506. **Refusing to give** *the department of revenue or its agent* **list of property or giving false name.** Every person who unlawfully refuses, upon demand, to give to *the department of revenue or its agent* a list of his property subject to taxation, or to swear to such list, or who gives a false name or fraudulently refuses to give his true name to *the department or its agent,* when demanded by *the department or its agent,* in the discharge of his official duties, is guilty of a misdemeanor."

Section 112. Section 94-35-260, R.C.M. 1947, is amended to read as follows:

"94-35-260. **State tax stamps—failure to affix or cancel—removal—penalty—counterfeiting tax stamp or insignia of Montana or other state—penalty.** (a) Every person required by law to affix any tax stamp or insignia of the state of Montana, to or upon any article to evidence the payment of a tax or license thereon, who shall fail, neglect or refuse to affix such stamp or insignia thereto, or to affix it in the proper place, or to cancel it, in the manner and as required by law, or as required by rules and regulations of the state *department of revenue* of this state when charged with administering any act relating thereto, or who shall willfully remove any such affixed stamp or insignia from any such article and affix it to another such article required by law to be so stamped or marked, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not less than thirty (30) days, nor more than six (6) months, or by a fine of not less than one hundred dollars ($100.00), nor more than three hundred dollars ($300.00), or by both such fine and imprisonment.

(b) Every person without authority of law, who shall willfully make, print, manufacture, counterfeit, or attempt to make, print, manufacture or counterfeit any such stamp or insignia of the state of Montana or of any other state, or who shall, without authority of law, have in his possession any such counterfeit stamp or insignia, die, equipment or material for the making, printing, manufacturing or counterfeiting of any such stamp or insignia, or who shall be concerned therewith, is guilty of a felony and shall be punished by imprisonment in the state prison not less than one (1) year, nor more than five (5) years, or by a fine of not less than one thousand dollars ($1,000.00), nor more than five thousand dollars ($5,000.00), or by both such fine and imprisonment."

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Section 113. Sections 16-1016, 16-3703, and 91-4466, R.C.M. 1947, are repealed.

Approved: March 20, 1973.

CHAPTER NO. 392

An Act to Authorize the Creation of Funds to Establish and Maintain Licensed Day Care Centers and Homes, and Providing for a Special Levy.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 10-802.1, which reads as follows:

10-802.1. The governing body of a city, town or municipality may in its discretion establish a fund to establish, and maintain licensed day care centers and homes within the geographic boundaries of the governing body by a levy of up to one (1) mill on each dollar of taxable property of said governing body. The tax levy shall be in addition to all other tax levies. The governing body shall have the power, by resolution, to make expenditures from the fund as it may from time to time determine, provided that expenditures shall be made solely for the establishment, maintenance and development of day care centers and homes.

Approved: March 20, 1973.

CHAPTER NO. 393

An Act Amending Section 11-1821, R.C.M. 1947, to Base Policemen's Retirement Pay on One Half the Base Salary, Excluding Overtime and Payments in Lieu of Sick and Annual Leave They Were Receiving as Active Officers Computed on the Highest Salary Received in Any One Month During the Last Year of Active Service.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-1821, R.C.M. 1947, is amended to read as follows:

"11-1821. **Payment of police reserves.** (1) Whenever any policeman or officer shall from age or disability become transferred from the active list of the police officers of any city or

town to the reserve list of *the* city or town, he shall thereafter be paid in monthly payments from the funds in this act provided for, a sum equal to *one half the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service;* provided that after completing twenty (20) years or more of active service if a policeman or officer elects to serve an additional one (1) to ten (10) years then the payment from the police reserves fund shall be increased at the rate of one per cent (1%) per year of additional service up to a maximum of sixty per cent (60%) of the last year's average salary received as a monthly compensation for services as an active member of the police department.

(2) Upon the death of any policeman or any officer on the active list or reserve list of any city or town, his surviving dependent widow, if there be such a surviving widow, shall, as long as she remains his widow, be paid, from the police reserves' fund, a sum equal to *one half the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service* prior to the date of his demise or prior to the date *the* policeman or officer passes to the police reserve list. No surviving widow shall be entitled to payments under the provisions of this act if she be fifteen (15) years younger than her husband, unless she shall have been married to and living with her husband for ten (10) years immediately preceding his death. If *the* policeman or officer *leaves* a dependent minor child, or dependent minor children, then upon the death of *the* policeman or officer, providing he leaves no surviving widow, or upon the death or remarriage of his widow, or if his widow be fifteen (15) years younger than her husband and shall not have been married to and living with her husband for the ten (10) years immediately preceding his death, then his surviving dependent minor child, or dependent children, collectively, if there be more than one (1) dependent minor child, shall be paid the same monthly payments as are herein provided to be paid to the surviving widow, until *the* minor child, or minor children, *reach* the age of eighteen (18) years or shall have married; provided further that the payments herein provided for to be made to the *beneficiaries* shall not be made if *the* payments require an increase in the mileage tax levy provided by section 11-1823, *R.C.M. 1947.*

(3) Payments as herein provided for, to be made to the minor child or children of police officers shall be paid to the duly appointed, qualified and acting guardian of *the* child or children, for the use of *the* minor, until *the* minor shall have reached the

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age of eighteen (18) years or shall have married and in case there is more than one *(1)* minor child, upon each child reaching the age of eighteen (18) years the prorata payments to *the* child shall cease and shall be made to the remaining minor child or children until the youngest child *reaches* the age of eighteen (18) years or *is* married.

(4) The term "policeman," or "police officer," *includes* all those on the reserve list, as well as "active police," or "police officer," and "patrolman," *or any of those terms.*

(5) Before any payments are made to any member of the police reserve, the governing body of the city shall, forthwith, determine the eligibility of such member for payments and the amount thereof in accordance with the terms of this section."

Approved: March 20, 1973.

CHAPTER NO. 394

An Act to Amend Section 87-103, R.C.M. 1947, Providing for an Increase in the Maximum Weekly Benefit Amount; Providing a New Formula for Determining the Qualifying Base Period Wage; and Providing Amendments to Conform with Reorganization as Required in Title 82A, Chapter 10, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 87-103, R.C.M. 1947, is amended to read as follows:

"87-103. **Benefits.** (a) Payments of benefits. Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed; provided, however, that wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094), or for services performed for an employer, as defined in said act, shall not be included for the purposes of determining eligibility or weekly benefit amount under this act. All benefits shall be paid through public employment offices in the state of Montana, or other agencies designated by the *division,* in accordance with such rules and regulations as the *division* may prescribe.

(b) Weekly benefit amount. Any individual whose benefit year begins on or after July 1, 1971, shall receive as his weekly benefit amount, an amount equal to one twenty-sixth (1/26) of his

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total wages for insured work paid during the calendar quarter of his base period in which his wages were highest. Such weekly benefit amount, if not a multiple of one dollar ($1), shall be rounded to the nearest multiple of one dollar ($1).

On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by fifty-two (52) and the average weekly wage, rounded to the nearest cent, thus determined Fifty per cent (50%) of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. Such maximum weekly benefit amount if not a multiple of one dollar ($1), shall be computed to the nearest multiple of one dollar ($1).

The minimum weekly benefit amount shall be twelve dollars ($12).

The division shall prepare and publish annually a benefit schedule in accordance with the provisions of this subsection.

(c) Qualifying wages. To qualify as an insured worker an individual must have been paid wages for insured work in *the quarters of* his base period, *other than the quarter in which his wages were highest, an amount* totaling not less than *thirteen (13) times his weekly benefit amount.*

(d) Wage record. The *division* shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

(e) Benefits. All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse, or if there be no surviving spouse, then to the surviving children, or if there be no surviving children, then to the next of kin, without the necessity of any recipient obtaining letters testamentary or of administration.''

Approved: March 20, 1973.

CHAPTER NO. 395

An Act Transferring the State Board of Hail Insurance from the State Auditor to the Department of Agriculture for Adminis-

trative Purposes Only; and Repealing Section 82A-2103, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The state board of hail insurance created in title 82, chapter 15, and transferred under section 82A-2103 to the state auditor, is transferred to the department of agriculture, for administrative purposes only.

Section 2. Section 82A-2103, R.C.M. 1947, is repealed.

Approved: March 20, 1973.

CHAPTER NO. 396

An Act to Amend Section 75-6001, R.C.M. 1947, Relating to Teacher Certification; Providing an Exemption for Student Teachers Performing Practice Teaching in the Public Schools; and Defining the Legal Status of Student Teachers During Such Assignment.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-6001, R.C.M. 1947, is amended to read as follows:

"75-6001. **System of teacher certification.** In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher certification shall be established and maintained under the provisions of this Title and no person shall be permitted to teach in the public schools of the state until he has obtained a teacher certificate or the district has obtained an emergency authorization of employment from the state.

The above certification requirement shall not apply to a student teacher who is hereby defined as a student enrolled in an institution of higher learning approved by the board of regents of higher education for teacher training and who is jointly assigned by such institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher.

A student teacher, while serving such nonsalaried internship under the supervision of a certificated teacher, shall be accorded the same protection of the laws as that accorded a certificated teacher, and shall, while acting as such student teacher, comply

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with all rules and regulations of the governing board of the district or public institution and the applicable provisions of section 75-6108 relating to the duties of teachers.''

Approved: March 20, 1973.

CHAPTER NO. 397

An Act Amending Section 75-8702, R.C.M. 1947, Providing that Residency Status of Students May Be Determined by Authority of the Regents.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-8702, R.C.M. 1947, is amended to read as follows:

"75-8702. **Definitions.** Terms used in this chapter are definded as follows:

(1) "domicile" means person's true, fixed, and permanent home and place or habitation;

(2) "emancipated minor'' means person under the age of nineteen (19) years who supports himself from his own earnings or is married.

(a) A person who received more than twenty-five per cent (25%) of the cost of supporting himself from any person other than an agency of the government shall not be considered an "emancipated minor."

(3) "minor" means male or female person who has not obtained the age of nineteen (19) years.

(4) "qualified person" means person legally qualified to determine his own domicile.

(5) "Resident student" means:

(a) A student who has been domiciled in Montana for one (1) year immediately preceding registration at any unit for any term or session for which resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education shall not alone be sufficient to qualify for residence in Montana.

(b) Any graduate of a Montana high school whose parents, parent, or guardian have resided in Montana at least one (1) full year of the two (2) years immediately preceding his graduation

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from high school. Such classification shall continue for not more than four (4) academic years if the student remains in continuous attendance at a unit.

(6) In the event the definition of residency or any portion thereof is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system shall have authority to make rules and regulations on what constitutes adequate evidence or residency status not inconsistent with such court decisions."

Approved: March 20, 1973.

CHAPTER NO. 398

An Act to Regulate the Operation of Motorcycles.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. (1) The operator and passenger, if any, of any motorcycle operated upon the streets or highways of this state shall wear protective headgear upon the head. Such headgear shall meet standards established by the department of justice.

(2) All motorcycles operated on the streets and highways of this state shall be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order, and in constant operation.

Approved: March 20, 1973.

CHAPTER NO. 399

An Act to Amend Title 84, Chapter 18, R.C.M. 1947, by Adding a New Section Designated 84-1840.1, R.C.M. 1947, Allocating Funds to Be Used by the Department of Highways for the Participation with Railroads for Erection of Railroad Grade Crossing Protection on Roads and Streets Except those on the Interstate, Primary or Urban Systems; Providing for Reimbursement of the Fund at the Beginning of Each Fiscal Year; Providing that the Department of Highways Shall Select the Crossings to be Protected and that Participation Be on the Same Basis as Applicable on Federal Aid Roads; Authorizing Counties and Cities to use Funds Allocated to Them from Gasoline Tax Money for Participation in Grade Crossing Protection; Repealing all Acts and Parts of Acts in Conflict

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Herewith, Provided, However, that Sections 72-164 to 72-168, R.C.M. 1947, Inclusive are Not Repealed; and Providing that this Act Shall Be Effective on Passage and Approval.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 84-1840.1, R.C.M. 1947, which reads as follows:

84-1840.1. Allocation of funds — participation in railroad grade crossing protection on highways, roads, or streets, other than those designated on the interstate, primary or urban system. The sum of one hundred thousand dollars ($100,000) may be allocated from the earmarked revenue fund, state highway account for the fiscal year ending June 30, 1973, and so much for each succeeding fiscal year as may be necessary to reimburse the fund for expenditures and committments made and to maintain the fund at one hundred thousand dollars ($100,000) at the beginning of each fiscal year thereafter, for participation by the department of highways with railroads in construction or railroad grade crossing protection on any public highway or road, except those designated on the interstate, primary or urban systems, within the state of Montana. The department of highways shall select those grade crossings in the state which in the opinion of the department are most in need of additional crossing protection and shall finance the cost thereof solely from this fund. Signal protection provided under the fund shall be limited to electric or automatic flashing lights or gates depending on the amount and nature of the hazards present at the crossing and participation in construction of such signals shall be on the same basis and under the same standards as are applicable and used in connection with protection of grade crossings on federal-aid roads within the state, provided, however, the fund shall not be used for protection of grade crossings on the secondary system where the protection is considered necessary and the cost thereof is financed in part with federal-aid highway funds. In addition to the funds allocated, counties and cities may authorize the use of funds available to said counties and cities under the provisions of section 84-1840 for participation of installation in grade crossing protection within the county or city.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed, provided, however, that sections 72-164 to 72-168 inclusive are not repealed.

Section 3. This act is effective on its passage and approval.

Approved: March 21, 1973.

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CHAPTER NO. 400

An Act Amending Section 75-6905, R.C.M. 1947, to Raise the Maximum Budget Schedules for Elementary and High Schools.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-6905, R.C.M. 1947, is amended to read as follows:

"75-6905. **Maximum - general - fund - budget - without - a - voted - levy schedules for elementary and high schools.** The total amount of the general fund budget of any district shall not be greater than the general fund budget amount specified in the following schedules, except when a district has adopted an emergency general fund budget under the provisions of section 75-6727 or when a district has voted an additional levy under the provisions of section 75-6923.

Elementary School Schedule for *1973-74*

(1) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be *seven thousand eight hundred six dollars and fifty cents ($7,806.50),* if said school is approved as an isolated school.

(2) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be *seven thousand eight hundred six dollars and fifty cents ($7,806.50) plus two hundred seventy six dollars and fifty cents ($276.50)* per pupil on the basis of the average number belonging over nine (9).

(3) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be *ten thousand two hundred eighty-six dollars ($10,286) plus three hundred sixty-four dollars and fifty cents ($364.50)* per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).

(4) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be *seventeen thousand five hundred eighty-six dollars ($17,586) plus two hundred fifty-two dollars and fifty cents ($252.50)* per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).

(5) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and em-

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ploying a minimum of three (3) teachers, the maximum of *six hundred forty-two dollars and fifty cents ($642.50)* shall be decreased at the rate of forty-three cents ($.43) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of *six hundred sixteen dollars and fifty cents ($616.50)* shall be decreased at the rate of fifty-one cents ($.51) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed *five hundred thirteen dollars and fifty cents ($513.50)* for each pupil.

(6) The maximum per pupil, for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

High School Schedule for *1973-74*

(7) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be *thirty-seven thousand five hundred ten dollars ($37,510)*.

(8) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum *one thousand five hundred sixty-two dollars and seventy-five cents ($1,562.75)* shall be decreased at the rate of nine dollars seventy-five cents ($9.75) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of *one thousand four hundred six dollars and seventy-five cents ($1,406.75)* shall be decreased at the rate of six dollars sixty cents ($6.60) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of *one thousand nine dollars and seventy-five cents ($1,009.75)* shall be decreased at the rate of two dollars fifteen cents ($2.15) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of *seven hundred ninety-four dollars and seventy-five cents ($794.75)* shall be decreased by forty-nine cents ($.49) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of *seven hundred forty-six dollars and seventy-five cents ($746.75)* shall be decreased at the rate of thirteen cents ($.13) until the ANB

shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed *seven hundred eight dollars and seventy-five cents ($708.75)* per pupil.

(9) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

Elmentary School Schedule for *1974-75* and Succeeding Years

(10) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be *eight thousand thirty-seven dollars ($8,037),* if said school is approved as an isolated school.

(11) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be *eight thousand thirty-seven dollars ($8,037) plus three hundred two dollars ($302)* per pupil on the basis of the average number belonging over nine (9).

(12) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be *ten thousand seven hundred forty-seven dollars ($10,747) plus three hundred ninety dollars ($390)* per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).

(13) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be *eighteen thousand forty-seven dollars ($18,047) plus two hundred seventy-eight dollars ($278)* per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).

(14) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of *six hundred sixty-eight dollars ($668)* shall be decreased at the rate of forty-three cents ($.43) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100)

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pupils, the maximum of *six hundred forty-two dollars ($642)* shall be decreased at the rate of fifty-one cents ($.51) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed *five hundred thirty-nine dollars ($539)* for each pupil.

(15) The maximum per pupil, for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

High School Schedule for *1974-75* and Succeeding Years

(16) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be *thirty-eight thousand three hundred sixty-two dollars ($38,362).*

(17) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum *one thousand five hundred ninety-eight dollars and twenty-five cents ($1,598.25)* shall be decreased at the rate of nine dollars seventy-five cents ($9.75) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of *one thousand four hundred forty-two dollars and twenty-five cents ($1,442.25)* shall be decreased at the rate of six dollars sixty cents ($6.60) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of *one thousand forty-five dollars and twenty-five cents ($1,045.25)* shall be decreased at the rate of two dollars fifteen cents ($2.15) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of *eight hundred thirty dollars and twenty-five cents ($830.25)* shall be decreased by forty-nine cents ($.49) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of *seven hundred eighty-two dollars and twenty-five cents ($782.25)* shall be decreased at the rate of thirteen cents ($.13) until the ANB shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed *seven hundred forty-four dollars and twenty-five cents ($744.25)* per pupil.

(18) The maximum per pupil for all pupils (ANB) and for

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all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

(19) The general fund budget amount for an approved and accredited junior high school shall be prorated between the elementary district general fund budget and the high school district general fund budget in the following manner:

(a) determine the per-ANB schedule amount for the school, as defined by this section, from the high school schedule;

(b) calculate the ANB for the regularly enrolled full-time pupils enrolled in the seventh (7th) and eighth (8th) grades of the junior high school;

(c) multiply the per-ANB schedule amount determined in subsection (a) by the ANB calculated in subsection (b) to determine the authorized general fund budget amount which shall be available for the elementary district general fund budget; and

(d) subtract the amount determined in subsection (c) from the total authorized general fund budget amount for the school to determine the authorized general fund budget amount which shall be available for the high school district general fund budget.

The general fund budget amount determined for each school of a district under the schedules provided in this section shall be totaled to determine the maximum-general-fund-budget-without-a-voted-levy for such district."

Approved: March 21, 1973.

CHAPTER NO. 401

An Act to Amend Sections 11-3702, 11-3705, 11-3709, 11-3710, 11-3711, 11-3712, 11-3718, 11-3720 and 11-3723, R.C.M. 1947, Relating to the Acquisition, Construction, Establishment, Maintenance, Financing, and Leasing of Off-Street Parking and Related Facilities by Cities and Parking Commissions thereof; Authorizing Revenue Bonds Issued for Such Facilities to Be Secured by the Pledge of On-Street and Off-Street Parking Revenues, Special Assessments, Reserves to Be Maintained by Transfer from Other City Funds and the Levy of Taxes Limited

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to the Amount of Deficiencies in the Reserve; Mortgages of Facilities Paid for from the Proceeds of the Bonds; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-3702, R.C.M. 1947, is amended to read as follows:

"11-3702. **Definitions.** The following terms, wherever used or referred to in this *chapter,* shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Commission" or "parking commission" shall mean any of the public corporations which may be created by *a city and any city which may exercise the powers of a parking commission pursuant to resolution adopted by its legislative body under the provisions of* section *11-3703.*

(b) "The city" shall mean the particular city for which a particular commission may be created, or which may act as such a commission *pursuant to resolution of its legislative body.*

(c) "Legislative body" shall mean the city council or other body in which the general legislative powers of the city are vested.

(d) "Mayor" shall mean the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(e) "Clerk" shall mean the clerk of the city or the officer charged with the duties customarily imposed on such clerk.

(f) "Obligee of the commission" or "obligee" shall be any bondholder, trustee or trustees for any bondholders, or lessor demising to the commission property used in connection with a parking facility, or any assignee or assignees of such lessor's interest, or any part thereof, and the state, or the United States or any agency of either, when a party to any contract with a commission by which aid or a loan is given or made to the commission.

(g) "State public body" means the state, or any city commission, or any other subdivision or public body of the state.

(h) "Project" shall mean any acquisition, improvement, construction, or undertaking of any kind authorized by this *chapter.*

(i) "Indenture" as used in this *chapter means* ordinance, resolution, or indenture which may be passed, adopted or entered into by a commission or by the legislative body of a city and

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"clause" includes article, section, subsection, paragraph, sentence or provision."

Section 2. Section 11-3705, R.C.M. 1947, is amended to read as follows:

"11-3705. **Estimate and appropriation of money required—report of transactions to be filed.** *(1)* When *any city or* the commission created for *it* becomes authorized to transact business and exercise *the* powers *of a parking commission*, the legislative body of the city may, subject to its fiscal law, at that time, and from time to time thereafter, make an estimate of the amount of money required for administrative purposes of the commission, and may appropriate such amounts to the commission as it deems necessary, subject to such conditions as the legislative body may prescribe.

(2) The legislative body *shall cause* a detailed report of all transactions *of the parking commission*, including a statement of all revenues and expenditures, *to be filed with it* at quarterly, semi-annual or annual intervals as the legislative body may prescribe and shall *cause to be published* at least once annually in a newspaper of general circulation, published in the city, or if none is so published then in such newspaper of general circulation as *it* may deem most likely to give notice to *all* residents of the city, a *summary* statement of all its financial affairs, *which shall be* audited *annually* by independent certified public accountants."

Section 3. Section 11-3709, R.C.M. 1947, as amended to read as follows:

"11-3709. **Lease—bids.** The commission or city may lease any project acquired by it under the provisions of this *chapter* to the highest responsible bidder after notice, which shall consist of the publication of a notice inviting bids, by two or more insertions thereof, not less than five (5) days apart, in a newspaper of general circulation printed and published in such city, or city and county, which publication shall be commenced not less than fifteen (15) days prior to the date set in the notice for the opening of bids; or if there be no newspaper of general circulation printed or published therein, by posting copies of said notice inviting bids in at least three (3) public places in the city, or city and county, not less than fifteen (15) days prior to the date set in the notice for the opening of bids. Such notice shall distinctly and specifically describe the project and the facilities in connection therewith which are to be leased, the period of time for which said project is to be leased and the minimum rental to be paid under such lease; provided if the commission or city shall by resolution entered upon its minutes find and determine that the purposes of this *chapter* will not be accomplished and the public interest will not be served

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by lease of any particular project for operation as a private parking project, the commission may lease such project to the city or the city may operate any such project itself as a municipal parking *project,* subject to the ordinances, rules and regulations of the city pertaining to municipal parking *projects.''*

Section 4. Section 11-3710, R.C.M. 1947, is amended to read as follows:

"11-3710. **Planning, zoning and building laws—co-operation of city officers and departments—payment in lieu of taxation.** All parking facilities of a commission shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the parking facility is situated. In the planning and location of any parking facility, a commission shall be subject to the relationship of the facility to any master plan or sections of a master plan for the development of the area in which the commission functions. In order that there may be no unnecessary duplication of effort or expense, the commission shall have access for the purposes of the commission to the services and facilities of the city planning department, the city engineer, the police department, the fire department and such other departments and offices of the city as may be appropriate therefor. The legislative body may *by* resolution provide for a sum to be paid annually by the commission to the city, which shall not exceed the amount the commission would be required to pay in ad valorem taxes if it were a private entity owning the same property, *and shall not be paid from any funds needed for current operation, maintenance, debt service, or repairs, or for compliance with any other provisions of indentures securing obligations of the commission.''*

Section 5. Section 11-3711, R.C.M. 1947, is amended to read as follows:

"11-3711. **Revenue bonds.** The commission shall have power to issue revenue bonds in its name *or in that of the city. No such bonds or the interest thereon shall be payable from or secured by a pledge or mortgage of any funds or properties of the city except those expressly enumerated in section 11-3712.''*

Section 6. Section 11-3712, R.C.M. 1947, is amended to read as follows:

"11-3712. **Types of bonds—sources from which payable.** A commission may issue such types of revenue bonds as it may determine, including revenue bonds on which the principal and interest are payable:

(a) Exclusively from the income and revenues of the parking facilities financed with the proceeds of such bonds;

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(b) exclusively from the income and revenues of certain designated parking facilities whether or not they were financed in whole or in part with the proceeds of such bonds;

(c) *from a charge on such revenues either prior or subordinate to the payment of any designated part or all of the costs of operation and maintenance and other expenses of such facilities.''*

(d) from any contributions or other financial assistance from the state or federal governments;

(e) from *any or all on-street* parking meter revenues of the city which may be *pledged and* appropriated by *or under authority of* the *legislative* body *for this purpose until the bonds are fully paid;*

(f) from the collections of special assessments, and interest thereon, levied to finance the cost of parking facilities under any of the provisions of title 11, chapter 22, which may be pledged and appropriated by or under authority of the legislative body for the payment of revenue bonds issued under the provisions of this section 11-3712 and are not pledged for the payment of special improvement district bonds;

(g) from a reserve which may be established and agreed to be maintained by the transfer of such other city funds as may be pledged and appropriated, by or under authority of the legislative body, to meet deficiencies in the reserve until the bonds are fully paid; provided that the funds from which such transfers are made shall be reimbursed from the next collections of other revenues enumerated in this section 11-3712 which are not needed for full compliance with provisions of indentures securing all outstanding obligations of the commission, and nothing herein shall permit the levy of taxes at any time in excess of the deficiency then existing in the reserve, but such tax as may be needed, with other funds determined by the legislative body to be available to meet the deficiency, may and shall be levied and shall not be subject to any limitation of rate or amount provided in any other law;

(h) from the proceeds of sale upon foreclosure of any mortgage of an off-street parking facility, made by or under authority of the legislative body to secure the payment of any revenue bonds issued under this section 11-3712, provided that no such mortgage shall be placed upon any property of the city or commission unless the cost of such property to the city has been paid from the proceeds of such bonds; or

(i) any combination of these *sources.''*

Section 7. Section 11-3718, R.C.M. 1947, is amended to read as follows:

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"11-3718. **Signatures on bonds.** All of the signatures on said bonds and on the interest coupons thereof may be printed, lithographed or engraved *facsimilies* except *one signature of an* officer of the *city or* commission *or a representative of the trustee,* which shall be manually affixed. If any of the officers whose signatures appear upon the bonds or coupons cease to be officers before delivery of the bonds or coupons, their signatures are nevertheless valid and of the same force and effect as if the officers had remained in office until the delivery of the bonds and coupons."

Section 8. Section 11-3720, R.C.M. 1947, is amended to read as follows:

"11-3720. **Sale of bonds—payment of interest—lien of bonds—temporary bonds—tax exemption—legal investments—refunding bonds.** The commission may fix terms and conditions for the *public or private* sale or other disposition of any authorized issue of bonds. The commission may sell bonds at *not* less than *ninety-five per cent (95%) of* their par or face value. Interest on bonds may be paid out of the proceeds of the sale of the bonds during the actual construction of any project for the acquisition, construction or completion of which the bonds have been issued, and for a period of not to exceed two (2) years thereafter as provided for in the indenture. Pending the actual issuance or delivery of revenue bonds, the commission may issue temporary or interim bonds, certificates or receipts of any denomination whatsoever, and with or without coupons, to be exchanged for definitive bonds when ready for delivery, *or to be paid at or before maturity, with accrued interest, from the proceeds of the definitive bonds.* All such revenue bonds, and the interest or income therefrom, are exempt from all taxation in this state, other than gift, inheritance and estate taxes. All bonds issued under this *chapter* shall be legal investments for both public and private funds. The commission may provide for the issuance, sale, or exchange of refunding bonds for the purpose of redeeming or retiring any revenue bonds issued by the commission. All provisions of this *chapter* applicable to the issuance of revenue bonds are applicable to the funding or refunding bonds and to the issuance, sale or exchange thereof."

Section 9. Section 11-3723, R.C.M. 1947, is amended to read as follows:

"11-3723. **Contracts—indenture—lease—incorporation by reference—rights of obligee.** Every contract entered into by the commission for the use of any project or the services or facilities thereof, acquired, constructed or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any indenture pursuant to which the bonds were issued.

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An obligee of a commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) (To Compel Performance of Contract.) By mandamus, suit, action or proceeding at law or in equity to compel said commission and the members, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this *chapter.*

(b) (To Enjoin Unlawful Acts.) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said commission."

Section 10. This act is effective on its passage and approval.

Approved: March 21, 1973.

CHAPTER NO. 402

An Act to Permit the Department of Highways to Apportion State Construction Funds During the Interim Between Legislative Sessions.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 32-2612, R.C.M. 1947, which reads as follows:

32-2612. During the interim between legislative sessions, the department of highways is hereby delegated power and authority to develop formulas to apportion state construction funds in an equitable manner consistent with the intent of this act to match federal-aid funds for highway systems or purposes not enumerated in this act. Such apportionment formulas shall be valid only until approved, modified or rejected by the next succeeding legislative session.

Approved: March 21, 1973.

CHAPTER NO. 403

An Act Amending Section 66-1025, R.C.M. 1947, Providing for Reciprocity for Doctors or Osteopathy; and Providing an Effective Date.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-1025, R.C.M. 1947, is amended to read as follows:

"66-1025. **Qualifications for licensure—physician's certificates, reciprocity and endorsement.** (1) Subject to the other provisions and conditions of this act, a physician's certificate, or a certificate by reciprocity or a certificate by endorsement shall be granted by the board to an applicant therefor only upon the basis of:

(a) the passing by the applicant of an examination given and graded by the board; or

(b) a certification of record or other certificate of examination issued to or for the applicant by the National Board of Medical Examiners, or successors, or by the Federation Licensing Examination Committee, or successors, certifying that the applicant has passed an examination given by such board; or

(c) a valid, unsuspended and unrevoked license or certificate issued to the applicant on the basis of an examination, by a duly constituted examining board under the laws of any other state or any territory of the United States or of the District of Columbia or of any foreign country whose licensing standards at the time such license or certificate was issued were, in the considered judgment of the board, essentially equivalent to those of the state of Montana for the granting of a license to practice medicine, provided:

(i) that under the scope of such license or certificate that the applicant was authorized to practice medicine in such state, territory or country;

(ii) that no applicant who applies for a license on the basis of an examination and fails the examination shall thereafter be granted a license based on credentials from another state, territory or foreign country or on a certificate issued by the National Board of Medical Examiners, or successors, or by the Federation Licensing Examination Committee or successors;

(iii) that the board may, by specific regulation, prescribe and enforce reciprocity or endorsement requirements current with changes in standards in the practice of medicine; and

(iv) that the board may, in the case of an applicant for admission by reciprocity, or endorsement, require a written or oral examination of said applicant; and

(v) the board may require that graduates of foreign medical schools shall have passed the examination given by the Education Council for Foreign Medical Graduates, or successors.

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(vi) holders of the degree of doctor of osteopathy *granted in 1955 or before* will be certified only on the basis of taking and passing the examination given by the board. *Holders of the degree of doctor of osteopathy granted after 1955 will be certified in the same manner as provided above for physicians.''*

Section 2. This act is effective on its passage and approval.

Approved: March 21, 1973.

CHAPTER NO. 404

An Act to Amend Section 87-148, R.C.M. 1947, to Provide Unemployment Compensation Coverage for All State Employees.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 87-148, R.C.M. 1947, is amended to read as follows:

"87-148. **Definitions.** As used in this act, unless the context clearly requires otherwise:

(a) "Annual payroll" means the total amount of wages paid by an employer (regardless of the time of payment) for employment during a calendar year.

(b) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

(c) ''Base period'' means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year *provided, however, that in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.*

(d) ''Benefit year'' with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim, and thereafter the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year, provided that if such filing shall result in an overlapping of benefit years the new benefit year shall begin upon the first Sunday following the expiration of his last preceding benefit year *provided, however, that in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of*

the United States, the base period shall be that applicable under the unemployment law of the paying state.

(e) "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(f) *"Division"* means the employment security *division of the department of labor and industry provided for in title 82A, chapter 10, R.C.M. 1947.*

(g) "Contributions" means the money payments to the state unemployment compensation fund required by this act.

(h) "Employing unit" means any individual or tpye of organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one (1) or more individuals performing services for it within this state*; and all* individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(i) "Employer" means:

(1) Any employing unit whose total annual payroll within either the current or preceding calendar year, exceeds the sum of five hundred dollars ($500);

(2) Any individual or employing unit which acquired the organization, trade or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this act), and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit would be an employer under paragraph (1) of this subsection;

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(4) Any employing unit not an employer by reason of any other paragraph of this subsection for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund, or *an employing unit,* which, as a condition for approval of this act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under this act.

(5) Any employing unit which, having become an employer under paragraph (1), (2), or (3), or (4), has not, under section 87-110, ceased to be an employer subject to this act; or

(6) For the effective period of its election pursuant to section 87-110 (c) and (d) any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" subject to other provisions of this subsection means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(A) The service is localized in this state; or

(B) The service is not localized in any state but some of the service is performed in this state and (I) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (II) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this state and the *division* approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4) Service shall be deemed to be localized within a state if—

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(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the *division* that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. *Effective after December 31, 1974, the term "employment" shall include service performed by all individuals in the employ of this state or of any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities).*

(7) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(A) for the purposes of *paragraph* (7) of this subsection the term "employment" does not apply to service performed:

(1) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

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(3) In the employ of a school which is not an institution of higher education; or

(4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(5) Services performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or any agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(6) Services performed for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution.

(8) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subparagraphs (2) or *(4)* of this subsection or the parallel provisions of another state's law), if:

(A) The employer's principal place of business in the United States is located in this state; or

(B) The employer has no place of business in the United States, but

(1) The employer is an individual who is a resident of this state; or

(2) The employer is a corporation which is organized under the laws of this state; or

(3) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(C) None of the criteria of divisions (A) and (B) of this subparagraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

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(D) An "American employer," for purposes of this paragraph, means a person who is:

(1) An individual who is a resident of the United States; or

(2) A partnership if two-thirds (2/3) or more of the partners are residents of the United States; or

(3) A trust, if all of the trustees are residents of the United States; or

(4) A corporation organized under the laws of the United States or of any state.

(9) The term "employment" shall not include:

(A) Agricultural labor; the term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, and remunerated services performed after December 31, 1971:

(1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity commonly known as agricultural commodities, or in connection with the hatching of poultry, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In the employ of the operator of a farm or a group of operators of farms (or a co-operative organization of which such operators are members) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state,

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any agricultural or horticultural commodity; but only if such operator *or operators* produced more than one-half (½) of the commodity with respect to which such service is performed.

(5) The provisions of paragraphs (1), (2), (3), and (4) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(6) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(B) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother;

(E) Service performed in the employ of this state, except as provided in subsection (j) (6) of this section, or of any political subdivision thereof, which has not elected coverage pursuant to section 87-110(d);

(F) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this section and shall be subject to this act the same as state banks;

(G) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the *division* is hereby authorized and directed to enter into agree-

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ments with the proper agencies under such act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner in section 87-121 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this act;

(H) Services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of eighteen (18) years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution.

(I) Services performed by real estate, securities and insurance salesmen paid solely by commissions and without guarantee of minimum earnings.

(J) Service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university, or by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college or university, and such employment will not be covered by any program of unemployment insurance.

(K) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(L) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital.

(k) "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as

a part of a state-controlled system of public employment offices, or such other free public employment offices operated and maintained by the United States government or its instrumentalities, as the *division* may approve.

(l) "Fund" means the unemployment compensation fund established by this act, to which all contributions *and payments in lieu of contributions are* required and from which all benefits provided under this act shall be paid.

(m) "State," includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(n) "Institution of higher education" for the purposes of this section, means an education institution which:

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this section.

(o) "Hospital" means an institution which has been licensed, certified or approved by the state of Montana as a hospital.

(p) "Board" means the board of labor appeals, provided for in title 82A, chapter 10."

Approved: March 21, 1973.

CHAPTER NO. 405

An Act to Provide for a General Revision of the Tax Laws of Montana to Implement Article VIII, Sections 3 and 7 of the

1972 Montana Constitution by Designating the State Department of Revenue as the Tax Administration Agency for the State of Montana, by creating a State Tax Appeal Board, by Designating County Assessors as Agents of the State Department of Revenue, and by Providing for County Tax Appeal Boards; and to Repeal Sections 84-211, 84-429.10, 84-443, 84-444, 84-445, 84-446, 84-447, 84-453, 84-502, 84-503, 84-4732, 84-4733, 84-4734, and 84-4735.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. **Classification of property for taxation.** For the purposes of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, *the state department of revenue* shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further that the average circuit miles for each station on the system is more than one and one-quarter (1¼) miles.

Class Three. Livestock, poultry and unprocessed products

of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this subsection (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

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In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state *department of revenue,* is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state *department of revenue* in such manner and form as may be required by said *department.*

Class Eight. Any improvement on real property, trailers, affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether

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with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit *to* the *state department of revenue* on a form as may be provided by the state *department of revenue* supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class.

Class Nine. Freeport merchandise. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state *department of revenue* in such manner or form as may be required by said *department.*

The state *department of revenue* shall establish standards, rules and regulations for assessing freeport merchandise.

Class Ten. All property not included in the nine (9) preceding classes.''

Section 2. Section 84-402, R.C.M. 1947, is amended to read as follows:

"84-402. *Department of revenue* **to determine and show percentage basis and taxable value computed thereon** *and county*

assessor to be agents of the state department of revenue. (1) The percentage basis of true and full value as provided for in section 84-302, shall be determined and assigned by the *state department of revenue or its agents,* and the taxable value thereupon computed when they make their annual assessments, and copies of such assessments as provided for in section 84-411 shall show the taxpayer the percentage class to which his various classes of property for taxation and the taxable valuation thereof *have been assigned.*

(2) The county assessors of the various counties of the state of Montana are agents of the state department of revenue for the purpose of locating and providing the department a description of all taxable property within the county together with other pertinent information; and for the purpose of performing such other administrative duties as are required for placing taxable property on the assessment roles. The assessors shall perform such other duties as are required by law, not in conflict with the provisions of this subsection.

(3) The department of revenue shall have full charge of appraising all property subject to taxation and equalizing values and shall secure such personnel as is necessary to properly perform their duties.

(4) The salaries of the county assessor shall be the same amount as provided by law for the salary of the county clerk and recorder; deputy assessors' salaries shall be the same as paid the deputy clerk and recorder.

(5) The county commissioners of the various counties shall provide existing office space in the county courthouse for use by the county assessor, his deputies and staff and the state appraiser and staff, if such space is reasonably available; if such space is not reasonably available in the courthouse and the same must be contracted for, the department shall pay the cost thereof. Additional personal property required by the department for the assessor to perform his duties as agent of the department shall be provided by the department."

Section 3. Section 84-403, R.C.M. 1947, is amended to read as follows:

"84-403. **Appeal for taxpayer aggrieved at percentage assignment.** If any taxpayer shall feel aggrieved at the percentage assignment so made by the *department of revenue or its agent,* he shall have the right to appeal to the county *tax appeal board,* on the percentage assignment the same as he now has on valuations, and also, the right to appeal from the county *tax appeal board* to the state *tax appeal board,* whose findings shall be final except as to, the right of review in the proper courts."

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Section 4. Section 84-406, R.C.M. 1947, is amended to read as follows:

"84-406. **Time of assessment—motor vehicles—mobile homes—livestock—snowmobiles.** (1) The *department of revenue or its agent* must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in *each* county subject to taxation, except such as is required to be assessed by the state *department of revenue,* and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first Monday of March next preceding. *It* must also ascertain and assess all mobile homes arriving in his county after 12 midnight of the first Monday of March next preceding. The procedure provided by this section shall not apply to:

(a) Motor vehicles which are required by subdivision (2) hereof to be assessed as of the first day of January; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid.

(b) Livestock being fed in feeding pens or enclosures which may by subdivision (3) of this section be assessed on an average inventory basis. Credits must be assessed as provided in section 84-101, subdivision 6.

(c) Property defined in section 53-642 as "special mobile equipment" shall be subject to assessment of personal property taxes either on the date that application is made for a special mobile equipment plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March.

(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(e) Snowmobiles which are required by subdivision 4 hereof to be assessed as of the first day of January.

(2) The *department or its agent* must ascertain and assess all motor vehicles, except mobile homes, in *each* county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at 12 midnight of the first day of January in each year. Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but said vehicles, and all other motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, and purchasers means and includes dealers who apply for registration

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or re-registration of motor vehicles, except as otherwise provided by section 32-3315. Goods, wares and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall continue to be assessed at full and true value as of the first Monday of March.

Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The assessed value of livestock being fed in feeding pens or enclosures on the first Monday in March may be computed by adding the value of livestock more than six (6) months of age being fed on the last day of each month since the last assessment date and dividing the sum by twelve (12).

(4) The *department of revenue or its agent* must ascertain and assess all snowmobiles in *each* county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such snowmobile was at 12 midnight of the first day of January in each year; provided, however, that snowmobiles which constitute inventory of snowmobile dealers shall be assessed to the dealers as of 12 midnight of the first Monday of March in each year."

Section 5. Section 84-409, R.C.M. 1947, is amended to read as follows:

"84-409. **Statement—what to contain.** *The department of revenue or its agent* must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control at twelve o'clock m. on the first Monday in March. Such statement must be in writing, showing separately:

1. All property belonging to, claimed by, or in the possession, or under the control or management of such person.

2. All property belonging to, claimed by, or in the possession, or under the control or management of any firm of which such person is a member.

3. All property belonging to, claimed by, or in the possession, or under the control or management of any corporation of

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which such person is president, secretary, cashier, or managing agent.

4. The county in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made) also the city, town, school district, road district, or other revenue districts in which it is situated.

5. An exact description of all lands in parcels or subdivisions, not exceeding six hundred and forty acres each, and the sections and fractional sections of all tracts of land containing more than six hundred and forty acres which have been sectionized by the United States government; improvements, and personal property, including all vessels, steamers, and other watercraft, and all taxable state, county, city, or other municipal or public bonds, and the taxable bonds of any person, firm, or corporation, and deposits of money, gold dust, or other valuables, and the name of the persons with whom such deposits are made, and the places in which they may be found; all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured, and the property in the county affected thereby.

6. All solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member, or due or owing to any corporation of which he is president, secretary, cashier, or managing agent.

Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm or corporation, another member of the firm, or another officer, need not include such property in the statement made by him; but this statement must show the name of the person or officer who made the statement in which such property is included.

7. All depots, shops, stations, buildings, and other structures erected on the space covered by the right of way, and all other property owned by any person, corporation, or association of persons, owning or operating any railroad within the county.

The fact that such statement is not required, or that a person has not made such statement under oath, or otherwise, does not relieve his property from taxation."

Section 6. Section 84-410, R.C.M. 1947, is amended to read as follows:

"84-410. *Department of revenue* **to furnish blanks, etc.** The *department of revenue* must furnish *its agents* with blank forms of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows: "I, ...,

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do swear that I am a resident of the county of .....(naming it), and that my post-office address is .....; that the above list contains a full and correct statement of all property subject to taxation, which I, or any firm of which I am a member, or any corporation, association, or company of which I am president, cashier, secretary, or managing agent, owned, claimed, possessed, or controlled at twelve o'clock m. on the first Monday in March last, and which is not already assessed this year; and that I have not in any manner whatsoever transferred or disposed of any property, or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same, or of making this statement; and that the debts therein stated as owing by me are justly due and owing to others.'' The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform substantially to the preceding form. The time when taxes become delinquent, and the time of the meeting of the county *tax appeal board,* must be stated in such form.''

Section 7. Section 84-411, R.C.M. 1947, is amended to read as follows:

"84-411. **Statement to be filled out and returned to** *agent of the department of revenue.* The *agent of the department of revenue* may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out. The *agent* must either in person or by mail deliver to the person making the statement a copy of the same, showing any corrections made thereto by the *agent.*

Section 8. Section 84-412, R.C.M. 1947, is amended to read as follows:

"84-412. **General powers of** *department of revenue. The department of revenue* has power:

1. To require any person *in the state* to make and subscribe an affidavit, giving his name and place of residence and post-office address.

2. To subpoena and examine any person in relation to any statement furnished to *it,* or which discloses property which is assessable in *the state*; and *it* may exercise this power in any county where the person whom *it* desires to examine may be found, but has no power to require such persons to appear before *it* in any other county than that in which the subpoena is served. Every person who refuses to furnish the statement hereinbefore required, or to make and subscribe such affidavit respecting his name and

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place of residence, or to appear and testify when requested so to do by the *department*, as above provided, for each and every refusal, and as often as the same is repeated, forfeits to the people of the state the sum of one hundred dollars, to be recovered by action brought in the name of the *state* in any police or justice's court. In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken, or the statement discloses property in any county other than that in which it is made, the *department* must, in the respective case, file the affidavit or statement in *its* office, and transmit a copy of the same, certified by *it*, to *its agent in the county* in which such residence or property is therein shown to be. All moneys recovered under the provisions of this section must be paid into the treasury of *the* county *in which the property is located.*"

Section 9. Section 84-413, R.C.M. 1947, is amended to read as follows:

"84-413. **Method of making assessment upon refusal of statement.** If any person, after demand made by the *department of revenue,* neglects or refuses to give, under oath, the statement herein provided for, or to comply with the other requirements of this title, the *department* must note the refusal on the assessment book opposite his name, and must make an estimate of the value of the property of such person, and the value so fixed by the *department* must not be reduced by the *county tax appeal board.*"

Section 10. Section 84-414, R.C.M. 1947, is amended to read as follows:

"84-414. **Assessment of unknown or absent owners.** If the owner or claimant of any property, not listed by another person, is absent or unknown, the *department* must make an estimate of the value of such property."

Section 11. Section 84-415, R.C.M. 1947, is amended to read as follows:

"84-415. **Assessment of unknown or absent owners—in whose name property to be assessed.** If the name of the absent owner is known to the *department,* the property must be assessed in his name; if unknown, the property must be assessed to unknown owners."

Section 12. Section 84-427, R.C.M. 1947, is amended to read as follows:

"84-427. **Assessment of railroads, telegraph, telephone and electric light lines.** Railroads operated or situated in one county, telegraph, telephone, and electric light lines and similar properties

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situated in one county, and their franchises; canals, ditches, and flumes, situated in one county and the franchises of the same, must be listed and assessed in the county in which such property is located, and the *department of revenue* must require the owner of such property, or his agent, or any officer of a corporation owning the same, to make a verified statement containing a list of the number of miles such property is operated or situated in the county, and the value thereof."

Section 13. Section 84-429, R.C.M. 1947, is amended to read as follows:

"84-429. **Land—how assessed.** All other taxable property must be assessed in the county, city, or district in which it is situated. Land must be assessed in parcels or subdivisions not exceeding six hundred and forty acres, and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States government, must be assessed by sections or fractions of sections.

The *department of revenue or its agent* must set aside one line in the assessment book for the description of each six hundred and forty acres of land, or less, the number of acres to be entered in one column, the description in another column, value in another column, value of improvements in another column, and the total in the total column. *It* must also set aside a line in the assessment book for the description of each town or city lot, the description to be entered in one column, the value in another column on the same line, the value of improvements in another column, and the total in the total column; provided, that all of the unimproved lots of the same value, situate in one block, or belonging to the same party, may be described and assessed in one line in the manner above provided for each lot. It is the intention hereby that each parcel and lot show in its own line, and opposite the description thereof, the separate value of the same and the value of the improvements thereon."

Section 14. Section 84-429.7, R.C.M. 1947, is amended to read as follows:

"84-429.7. **Classification and appraisal—duties of** *the department of revenue.* It is hereby made the duty of the *state department of revenue* to accomplish the following:

a. The classification of all taxable lands.

b. The appraisal of all taxable city and town lots.

c. The appraisal of all taxable rural and urban improvements.

A record thereof must be kept upon such maps, plats and

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forms, and entered in such books of record as may be prescribed by the state *department of revenue.* Such maps, plats, forms and books of record shall be official records of the *state.* A certified copy of all such records as may be desired shall be furnished to the state *department of revenue.*

It shall be the duty of the *state department of revenue* to maintain current, the classification of all taxable lands and appraisal of city and town lots, and rural and urban improvements, as provided for herein."

Section 15. Section 84-429.8, R.C.M. 1947, is amended to read as follows:

"84-429.8. *Property tax administration fund*—**tax levy for.** The *state legislature* shall create and establish a fund to be known as the *"property tax administration fund,"* and may levy annually a tax *not to exceed an amount appropriated therefor by the legislature* upon all property in the *state* subject to taxation, the proceeds of which shall be deposited by the county treasurer to the credit of *the state treasurer,* and any balance unexpended at the end of any fiscal year shall remain in such fund and be available to carry out the provisions of this act and to maintain and keep current the classification of all taxable lands and appraisals of city and town lots and rural and urban improvements. *All monies in this fund shall be available to the state legislature for appropriation to the proper agency. No monies shall be expended from this fund without an appropriation by the legislature.* All costs and expenses incurred by the *department of revenue* for such work, labor, services and supplies required by this act, shall be paid by warrants drawn on said fund on claims approved by *the department."*

Section 16. Section 84-429.9, R.C.M. 1947, is amended to read as follows:

"84-429.9. **Assessments to be made on classification and appraisal.** The assessments of all lands, city and town lots, and all improvements *must be made* on the classification and appraisal as made *or caused to be made by the department of revenue."*

Section 17. Section 84-429.11, R.C.M. 1947, is amended to read as follows:

"84-429.11. **Notice of classification and appraisal to owners—appeals.** It shall be the duty of the *department of revenue* to cause to be mailed to each owner a notice of the classification of the land owned by him and the appraisal of the improvements thereon. If the owner of any land and improvements be dissatisfied with the classification of his land or the appraisal of the improvements the *department of revenue* shall give reasonable notice to such tax-

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payer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing and thereafter the *department of revenue* shall determine the true and correct classification of such land or appraisal of such improvements and forthwith notify the taxpayer of their determination and when so determined the land shall be classified and improvements appraised in the manner ordered by the *department of revenue.* If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the *department of revenue* he shall have the right to appeal to the *county tax appeal board and then to the state tax appeal board* whose findings shall be final subject to the right of review in the proper court or courts."

Section 18. Section 84-439, R.C.M. 1947, is amended to read as follows:

"84-439. **Property concealed, misrepresented, etc.** Any property willfully concealed, removed, transferred, or misrepresented by the owner or agent thereof to evade taxation, upon discovery, must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the *county tax appeal board.*"

Section 19.. Section 84-440, R.C.M. 1947, is amended to read as follows:

"84-440. **Property having escaped assessment.** Any property discovered by the *department of revenue* to have escaped assessment may be assessed *at any time,* if such property is in the ownership or under the control of the same person who owned or controlled it at the time it should have been assessed."

Section 20. Section 84-441, R.C.M. 1947, is amended to read as follows:

"84-441. **Supplemental assessment.** When any personal property liable to taxation is brought into a county at any time after the second Monday of July, and such property has not been assessed for that year, it must be listed and assessed the same as if it had been in the county at the time of the regular assessment, and the tax must be collected, as provided in this code, at any time."

Section 21. Section 84-448, R.C.M. 1947, is amended to read as follows:

"84-448. **Annual settlements.** *The department of revenue,* county attorney and county treasurer must annually, on the first Monday of January, make a settlement with the county clerk of

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all transactions connected with the revenue for the previous year, and every county treasurer, on the expiration of his office, must make such settlement."

Section 22. Section 84-449, R.C.M. 1947, is amended to read as follows:

"84-449. *Department of revenue* **to collect farm statistics.** It shall be the duty of *the department of revenue,* at the time of making the annual assessment of property to collect such statistics in relation to farm products and agricultural resources from each farm owner, operator or renter as shall be called for by the commissioner of agriculture and on blanks to be prepared and furnished by the commissioner of agriculture."

Section 23. Section 84-450, R.C.M. 1947, is amended to read as follows:

"84-450. **Delivery to commissioner of agriculture.** The original blanks upon which the statistics are gathered by the *department of revenue* shall be returned to the commissioner of agriculture immediately on completion of *the* assessment work and not later than July first each year."

Section 24. Section 84-451, R.C.M. 1947, is amended to read as follows:

"84-451. **Statistics, how obtained.** If for any reason the *department of revenue* is unable to obtain the statistics from any farm owner, operator or renter, *it* shall obtain them from the most reliable source, so that the returns may be complete."

Section 25. Section 84-452, R.C.M. 1947, is amended to read as follows:

"84-452. **Penalty for refusal to furnish statistics.** Any farm owner, operator, or renter refusing to furnish the information called for in section 84-449, or willfully furnishes fraudulent information to *the department of revenue,* upon proper request therefor, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten dollars, nor more than one hundred dollars, and cost of prosecution."

Section 26. Section 84-501, R.C.M. 1947, is amended to read as follows:

"84-501. **Property—how listed.** The *state department of revenue* must prepare an assessment book with appropriate headings, alphabetically arranged, in which must be listed all property within the *state,* and in which must be specified in separate columns, under the appropriate head:

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1. The name of the person to whom the property is assessed.

2. Land, by township, range, section, or fractional section; and when such land is not a United States land division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in each and every tract six hundred and forty acres, locality, and the improvements thereon.

3. City and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and improvements thereon.

4. All personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment.

5. The cash value of real estate, other than city or town lots.

6. The cash value of improvements on such real estate.

7. The cash value of city and town lots.

8. The cash value of improvements on city and town lots.

9. The cash value of improvements on real estate assessed to persons other than the owners of the real estate.

10. The cash value of all personal property, exclusive of money.

11. The amount of money.

12. Taxable improvements owned by the person, firm, association, or corporation located upon land exempt from taxation must, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value, however, must be assessed against the exempt land, nor under any circumstances must the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

13. The school, road, and other revenue districts in which each piece of property assessed is situated.

14. The total value of all property.

15. The figure one (1), in separate columns, opposite the name of every person liable to pay a poll tax."

Section 27. There is a new section to be numbered 84-502.1, R.C.M. 1947, which reads as follows:

84-502.1. **Form of assessment book.** The form of the assessment book must be as directed by the state department of revenue.

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Section 28. Section 84-504, R.C.M. 1947, is amended to read as follows:

"84-504. **Map book.** The *department of revenue* must, in a map book, make a plat of the various blocks within any incorporated city or town, and mark thereon, in each subdivision, the name of the person to whom it is assessed."

Section 29. Section 84-505, R.C.M. 1947, is amended to read as follows:

"84-505. **Assessment and map book delivered to and kept by clerk.** As soon as completed, the assessment book, together with the map book and statements, must be delivered to the county clerk, who must immediately give notice thereof, and of the time the *county tax appeal board* will meet to *consider protests concerning assessments,* by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct; and in the meantime the assessment book must remain in his office for the inspection of all persons interested."

Section 30. Section 84-506, R.C.M. 1947, is amended to read as follows:

"84-506. **Statement by** *agent to the department of revenue.* On the second Monday in July in each year, the *agent of the department of revenue* in each county must transmit to the state *department of revenue* a statement, showing:

1. The several kinds of personal property.

2. The average and total value of each kind.

3. The number of livestock, number of bushels of grain, number of pounds, or tons, of any article sold by the pound or ton.

4. When practicable, the separate value of each class of land, specifying the classes and the number of acres in each."

Section 31. Section 84-507, R.C.M. 1947, is amended to read as follows:

"84-507. **Penalty for failure of** *agent of department of revenue* **to complete assessment book and transmit statement.** Every *agent of the department of revenue* who fails to complete his assessment book, or who fails to transmit the statement mentioned in the preceding section to the state *department of revenue,* forfeits the sum of one thousand dollars to be recovered on his official bond, for the use of the *department,* or to be deducted from his salary by the *director of revenue.*"

Section 32. Section 84-509, R.C.M. 1947, is amended to read as follows:

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"84-509. *Department* **to furnish assessor maps.** The *department of revenue* must provide maps for the use of *its agents,* showing the private lands owned or claimed in the county, and if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a *state* charge, and must be paid from the *state* general fund."

Section 33. Section 84-510, R.C.M. 1947, is amended to read as follows:

"84-510. **List of lands sold by state to be transmitted by state land agent.** On or before the first Monday in March in each year, the state land agent must make out and transmit to the *department of revenue* where lands or lots lie that may have been sold by the state, for which certificates of purchase, patents, or deeds have issued, during the year preceding, certified lists of such lands or lots, giving a description thereof by divisions or subdivisions, or lots and blocks, together with the names of the purchasers thereof."

Section 34. Section 84-511, R.C.M. 1947, is amended to read as follows:

"84-511. **Defects in form of assessment book may be supplied.** Omissions, errors, or defects in form in any original or duplicate assessment book, when it can be ascertained therefrom what was intended, may, with the consent of the county attorney, be supplied or corrected by the *department of revenue* at any time prior to the sale for delinquent taxes, and after the original assessment was made."

Section 35. Section 84-515, R.C.M. 1947, is amended to read as follows:

"84-515. **Fines and forfeitures to be paid to county treasurer.** *Except for the forfeiture described in section 84-507, R.C.M. 1947, all* fines, forfeitures, and penalties incurred by a violation of any of the provisions of this title must be paid into the treasury for the use of the county where the person against whom the recovery is had resides."

Section 36. Section 84-601, R.C.M. 1947, is amended to read as follows:

"84-601. *County tax appeal board*—**when to** *hear protests. The board of county commissioners of each county shall appoint a three (3) member county tax appeal board. The members of each tax appeal board shall be residents of the county in which they serve; they shall serve four (4) year terms and shall receive travel expenses*

and per diem only when the county tax appeal board is in session to hear taxpayer appeals from property tax assessments. Travel expenses and per diem shall be paid from the appropriation to the state tax appeal board. The first term shall run from July 1, 1973, through December 31, 1976. The *County tax appeal board* must meet on the third Monday of July in each year to *hear protests concerning assessments made by the department of revenue.* It must continue in session for that purpose from time to time until the business of *hearing protests* is disposed of, but not later than the second Monday in August. *In connection with any such appeal, the county tax appeal board shall have the authority to change any assessment or fix the assessment at some other level."*

Section 37. Section 84-602, R.C.M. 1947, is amended to read as follows:

"84-602. **Equalization of assessments.** The *department of revenue* has power after giving notice, in writing, to the taxpayer, by registered or certified mail, addressed to him at his last known place of residence, of its intention to increase or lower his assessment contained in the assessment book, so as to equalize the assessment of the property contained therein and make the assessment conform to the true value of such property in money, which notice shall specify the date and hour when he may appear and be heard thereon, which date shall not be less than five (5) days from date of mailing such notice, and immediately after reaching a decision, the *department* shall notify the taxpayer, in writing, of such decision, specifying the change, if any, made in the assessment; said notice to be given by registered or certified mail, addressed to the taxpayer at his last known place of residence. The *department* also has power *to raise or lower the valuation of all the property in a class by a certain percentage,* in the event that any class of property is assessed as a class, at more or less than its actual value, by *its agent* and the valuation of such property within the county demands a general reclassification."

Section 38. Section 84-603, R.C.M. 1947, is amended to read as follows:

"84-603. **Application for reduction in valuations.** No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the *county tax appeal board* on or before the 1st day of August, a written application therefor. Said application shall state the post-office address of the applicant, shall specifically describe the property involved and shall state the facts upon which it is claimed such reduction should be made. The *department of revenue* shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section."

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Section 39. Section 84-604, R.C.M. 1947, is amended to read as follows:

"84-604. **Examination of applicant.** Before the *county tax appeal board* grants any application or makes any reduction applied for, it must examine on oath, the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in the preceding section, and attends and answers all questions pertinent to the inquiry. The testimony of all witnesses upon such hearing must be reduced to writing and preserved, and transcribed if taken in shorthand or stenotype. The date of hearing, the proceedings before the board, and the decision, must be entered upon the minutes of the board, and the board shall notify the applicant of its decision, by registered or certified mail within three (3) days thereafter. *A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than three (3) days after the third Monday in August.*"

Section 40. Section 84-605, R.C.M. 1947, is amended to read as follows:

"84-605. **Change of valuation of class of property—hearing necessary.** The state *department of revenue may hold* a public hearing *to determine the value of any class of property* in *any* county and shall have authority to raise *or lower* the value of any class of property *on the basis of testimony* adduced at such hearing."

Section 41. Section 84-607, R.C.M. 1947, is amended to read as follows:

"84-607. *Agent* **to be present—statement of property not assessed.** During the *hearing* of the *department* the *agent of the state who assessed the property* whose testimony is needed must be present and may make any statement, or introduce and examine witnesses on questions before the *department,* and shall, when requested by the *department* or any party to the proceeding, furnish to the *department* a written statement showing the basis for his valuation of the property under consideration at the hearing; and shall, when requested by the *department* or any party to the proceeding, furnish to the *department* a written statement showing the basis for his valuation of any comparable property in the vicinity of the property under consideration at the hearing. At *the* meeting the *agent* shall present to *the department* a statement setting forth all property which has escaped assessment or which, by reason of erroneous reports or otherwise, has been assessed for less than its correct value; thereupon it shall be the duty of *the department* immediately to investigate *the* statement, and in

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the event that any property owner has been assessed for property at a smaller amount or at a less valuation than should properly have been given, *the department* shall *order the agent to* correct such assessment in the manner provided for the correction of assessments by the *department of revenue.*"

Section 42. Section 84-608, R.C.M. 1947, is amended to read as follows:

"84-608. *State department of revenue* **to use records in equalizing.** The *state department of revenue* must use the abstract and all other information it may gain from the records of the county clerk or elsewhere, in equalizing the assessment of the property of *each* county, and may require *entry* upon the assessment book *of* any property which has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made before the delivery of the assessment book to the county clerk."

Section 43. Section 84-609, R.C.M. 1947, is amended to read as follows:

"84-609. *Department* **may direct** *assessment* **in certain instances.** *The department of revenue* may direct *its agent* to assess any taxable property that has escaped assessment, or to add to the amount, number, or quantity of property, when a false or incomplete list has been rendered, and to make and enter new assessments (at the same time canceling previous entries), when any assessment made by him is deemed by the *department* so incomplete as to render doubtful the collection of the tax; but the *county* clerk must notify all persons interested, by letter deposited in the post office, postpaid, and addressed to the person interested, *within* ten days *after* the action is taken."

Section 44. Section 84-610, R.C.M. 1947, is amended to read as follows:

"84-610. *Department* **must keep record of proceedings and make oath.** The *department* must record, in a book to be kept for that purpose, all changes, corrections, and orders made by *it* and must *direct its agent to* enter upon the assessment book all changes and corrections made by *it.*"

Section 45. Section 84-701, R.C.M. 1947, is amended to read as follows:

"84-701. **State** *tax appeal board*—**appointment of members—term of office.** *The members of the state board of equalization shall constitute the first members of the state tax appeal board as provided in this section. On the effective date of this act, there shall be*

created a state tax appeal board which shall be composed of three members to be appointed by the governor for staggered terms by and with the advice and consent of the senate provided, however, a member so appointed may serve until the next regular session of the legislature without such advice and consent. Each succeeding member shall hold his office for a term of six years, and until his successor shall be appointed and shall have qualified. Any vacancy shall be filled by *the governor subject to confirmation by the senate during the next legislative session.* Succeeeding appointments, except when made to fill a vacancy, shall be made on or before the last day of January during the session of the legislative assembly, next preceding the commencement of the term for which the appointment is made."

Section 46. Section 84-702, R.C.M. 1947, is amended to read as follows:

"84-702. **Qualification and compensation.** The persons to be appointed as members of the *state tax appeal board* shall be such as are known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. No persons so appointed shall hold any other office under the laws of this state nor any other state, nor any office under government of the United States, or of any other state. He shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, nor engage in any occupation or business interfering or inconsistent with his duties. *The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in section 82A-108, R.C.M. 1947. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.* The member *designated* chairman as provided for in 84-703 shall receive additional compensation of not more than five hundred dollars ($500) per annum payable in the same manner as the salary. *The state tax appeal board shall be paid per diem and travel expenses* when away from the capital on official business."

Section 47. Section 84-703, R.C.M. 1947, is amended to read as follows:

"84-703. **Organization, quorum, sessions.** The members of *the state tax appeal board* shall without delay, meet at the state capital and *the governor shall designate one of their members* as chairman. A majority of said board shall constitute a quorum. It shall be in continuous session and open for the transaction of business every day except *Saturdays,* Sundays and legal holidays; and the sessions of said board shall stand and be deemed to be adjourned from day to day without formal entry thereof upon its records. The board may hold sessions or conduct hearings and investigations at other places than the capitol when deemed necessary

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to facilitate the performance of its duties or to accommodate parties in interest."

Section 48. Section 84-704, R.C.M. 1947, is amended to read as follows:

"84-704. **Definitions.** (1) The term "state board" or "board" when used in this act without other qualification, shall mean the state *tax appeal board.*

(2) The term "person," when used in this act, shall mean and include any individual, firm, partnership, association or corporation unless otherwise expressly stated.

(3) The phrase "municipal corporation" or "municipality" or "taxing unit" when used in this act shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue."

Section 49. Section 84-705, R.C.M. 1947, is amended to read as follows:

"84-705. **Employees—expenses—minutes—rules.** *The* state *tax appeal board* may appoint a secretary and employ such other persons as experts, assistants, clerks and stenographers, as may be necessary to perform the duties that may be required of it. The total expenses of such board shall not exceed, in the aggregate, during any fiscal year, the amount appropriated for the board for all purposes by the legislature for such year. The secretary shall keep full and correct minutes of the transactions and proceedings of said board, shall have authority to administer oaths and perform such other duties as may be required of him. The board may make all needful rules for the orderly and methodical performance of its duties as a *tax appeal board* and for conducting hearings and other proceedings before it."

Section 50. Section 84-706, R.C.M. 1947, is amended to read as follows:

"84-706. **Office, furnishings and supplies.** The board shall keep its office at the *capital,* and shall be provided with suitable and necessary offices and office furniture, printing, supplies, stationery, books, periodicals, and financial and commercial reports."

Section 51. Section 84-707, R.C.M. 1947, is amended to read as follows:

"84-707. **Continuity of action of former board.** All records, books, documents, reports, and correspondence *relating to tax ap-*

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peals, received and kept by the former state board of equalization, shall immediately, upon the organization of the new board, be transferred to it for its use and convenience. The board shall continue and complete any and all work *relating to tax appeals* undertaken or commenced and not completed by its predecessor.

Officers of municipal corporations heretofore required to make reports to the state board of equalization shall report to the *department of revenue."*

Section 52(a). Section 84-708, R.C.M. 1947, is amended to read as follows:

"84-708. **Powers and duties.** It shall be the duty of the *state tax appeal board:*

(1) To prescribe rules and regulations *for the tax appeal boards* of the different counties in the performance of their duties*;*

(2) To hear appeals from decisions of the county tax appeal boards;

(3) To hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, and penalties.

(4) Hearings, witnesses, contempt, fees and subpoenas. Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or his agent. In case any witness shall fail to obey any summons to appear before said board, or shall refuse to testify, or answer any material question, or to produce records, books, papers or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter, under consideration by the board shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the board.

(5) The state tax appeal board shall also have the duties of an appeal board relating to such other matters as may be provided by law.

Section 52(b). There is a new section to be numbered 84-708.1, R.C.M. 1947, which reads as follows:

84-708.1. Judicial review of contested cases. (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision in a contested case is entitled to judicial review under this act.

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(2) Proceedings for review shall be instituted by filing a petition in district court within thirty (30) days after service of the final decision of the state tax appeal board, or if a rehearing is requested within thirty (30) days after the decision thereon."

Section 53. There is a new section to be numbered 84-708.1, which reads as follows:

84-708.1. Powers and duties of the state department of revenue. (1) To annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights of way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals and flumes, and other similar property, constituting a single and continuous property operated in more than one (1) county in the state, and to apportion such assessments to the counties in which such properties are located on a mileage basis, or in the case of telegraph or telephone microwave electronic equipment, which has no physical connection with the total system, but is an integral part of such system, apportion the valuation for assessment of such company in this state among the several counties of this state in such proportion as will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as shall be just and equitable, provided, however, that lots and parcels of real estate not included in right of way, with the buildings, structures, and improvements thereon, dams and power houses, depots, stations, shops, and other buildings, erected upon right of way, furniture, machinery, and other personal property, shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the agent of the department of revenue in the county wherein they are situate.

(2) To transmit to the county clerk of each county its apportionment of all assessments made by the department.

(3) To adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of agents of the department; change, increase or decrease valuations made by its agents; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(4) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and

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over its agents and any officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement. Further, the state department of revenue is empowered to organize, and it shall be its duty to schedule and hold area schools within the state for appraisers and assessors as often as is deemed necessary in the judgment of the department and the costs of such appraisers and assessors attending shall be borne by the state. Further, the department shall determine if there is a need for a taxing, assessing, and appraising school, and such school shall be held, when deemed necessary. The department shall notify all assessors and appraisers at least six (6) months before such school is scheduled and it shall be the duty of all assessors and appraisers to attend and the cost of their attendance shall be borne by the state.

(5) To confer with, advise and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(6) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities and punishment of public officials and persons, or their agents, for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations; and to cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(7) To require county attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws, in their respective counties.

(8) To collect annually from the proper officers of the municipal corporations information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful and helpful in the work of the department in such form and upon such blanks as the department shall prescribe; and it shall be the duty of all public officers so called upon to fill out properly and return promptly to the department all blanks so transmitted and in every way aid the department in its work; to examine the records of all municipal corporations for such purposes as are deemed needful or helpful by the department.

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(9) In its discretion, to inspect and examine, or cause an inspection and examination of the records of the officers of any municipality, whenever such officer shall have failed, neglected or refused to return properly the information required by this section within the time set by the department. Upon completion of such inspection and examination the department shall transmit to the clerk, or other proper official of the municipality, a statement of the expenses incurred by the department to secure the necessary information. Within sixty (60) days after the receipt by the municipality of the above statement, the same shall be audited, as other claims of the municipal corporation are audited and shall be paid into the state treasury and if the same is not so paid the attorney general shall institute an action, in the proper court, against the municipality to recover the same.

The officers responsible for the furnishing of the information collected pursuant to this section, shall be jointly and severally liable for any loss the municipality may suffer, through their delinquency; and no payment shall be made to them for salary, or on any other account, until the cost of such inspection and examination as provided above shall have been paid into the treasury, or to the proper officers of such municipality. They shall also be subject to such other fines and penalities as prescribed by law.

(10) To require persons, as defined above, to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes and all other facts which may enable the department to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(11) To summon witnesses to appear and give evidence, and to produce records, books, papers and documents relating to any matter which the department shall have authority to investigate and determine.

(12) To cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court, in any matter which the department shall have authority to investigate and determine.

(13) To examine into all cases where evasion or violation of the laws for taxation of property, proceeds, occupation or business is alleged, complained of or discovered, and to ascertain wherein existing laws are ineffective or are improperly or negligently administered.

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(14) To investigate the tax systems of other states and countries and to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

(15) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto and the progress of the work of the department, and to furnish the governor such assistance as he may require.

(16) To transmit to the governor and to each member of the legislature twenty (20) days before the meeting of the legislature, a report of the department, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improvements in the system of taxation, together with such measures as may be formulated for the consideration of the legislature; and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

Section 54. Section 84-709, R.C.M. 1947, is amended to read as follows:

"84-709. **Appeal to state** *tax appeal board*—**hearing.** Any person, firm or corporation or the *department of revenue* in behalf of the state, or any municipal corporation, aggrieved by the action of any county *tax appeal board,* may appeal to the state board by filing with the county *tax appeal* board a notice of appeal, and a duplicate thereof with the state board, within ten days after the action of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The state board shall set such appeal for hearing either in its office in the capitol or such county seat as the board shall deem advisable to facilitate the performance of its duties or to accomodate parties in interest, and shall give to the appellant and to the county board at least five days notice of the time and place of such hearing; at the time of giving such notice the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith, and the state board may, in its discretion, determine the appeal on such record or may hear further testimony. For the purpose of expediting its work the state board may refer any such appeal to one of its members and the person so designated shall have and exercise all the powers of the board in conducting such hearings, and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board and the

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state board shall determine such appeal on the record so made. On all hearings at county seats throughout the state, the state board or *the member* designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received, and the cost thereof may be paid out of the general appropriation for the board."

Section 55. Section 84-710, R.C.M. 1947, is amended to read as follows:

"84-710. **Notice of intention to change assessment.** When the state *department of revenue* shall contemplate making any change in the assessment of any property assessed to any particular person (except in a case where an appeal has been filed with the state *tax appeal* board) , *the department* shall, before making any change in such assessment, fix a time and place for a hearing thereon, and give to such taxpayer written notice of such hearing by certified letter deposited in the post office postpaid, and directed to said taxpayer at his last known place of residence, at least ten (10) days before the day fixed for such hearing. Such notice shall state the purpose of such hearing and the time and place when the same will be held.

When the state *department of revenue* shall contemplate raising or lowering the assessed valuation of any one or more classes of property in any county, it shall give notice of its contemplated action to the board of county commissioners of the county in which such class or classes of property is situated, in such manner as it shall deem proper and sufficient, and shall fix a time and place within the county in which such change of assessment is proposed for a hearing thereon; provided, however, that if the change affects one or more classes of property common to more than one county the *department* shall fix the time and place of hearing so as to accomodate the counties interested. At the time and place fixed for such hearing any taxpayer or any officer of any municipal corporation interested therein may appear and be heard."

Section 56. Section 84-711, R.C.M. 1947, is amended to read as follows:

"84-711. **Assessment of omitted property—limitation.** Whenever the state *department of revenue* shall, in any year, discover that any taxable property of any person has not been assessed in such year, or that it has been omitted from taxation during any previous year or years, the *department* may assess the same for such year or for such previous years. The order making the assessment shall contain the name of the person to whom the property is assessed, a general description of such property, its assessed valuation, the year for which it is assessed and the county in which the same is

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assessed. A copy of such order shall be transmitted to the officer of the county, in whose possession the assessment books of such county are at the time of the making of such order by the *department,* and such officer shall immediately after receiving such copy, enter the assessment on the tax books of the county for the year in which such order is made, and thereupon such assessment shall have the same force and effect as though originally made by *its agent*; provided, however, that before making any such assessment the state *department of revenue* shall give the person to whom such property is proposed to be assessed, notice of its intention to make such assessment, and the time and place when a hearing will be had thereon; such notice to be given either by registered letter or personal service at least ten days before the date so fixed for such hearing; and provided further that all assessments of omitted property must be made within three years after the end of the calendar year in which the same should have been assessed."

Section 57. Section 84-712, R.C.M. 1947, is amended to read as follows:

"84-712. **Statement of changes to be sent to county clerk.** The *department of revenue* shall transmit to each county clerk a statement of the changes made by the *department* in the assessment book of the county, or any assessment contained therein, which shall be prima facie evidence of the regularity of all proceedings of the *department* resulting in the action which is the subject matter of the statement."

Section 58. Section 84-714, R.C.M. 1947, is amended to read as follows:

"84-714. **Penalty for refusal to furnish information.** If any person shall refuse inspection of any books or records when requested by the *department* or its authorized agent, or shall refuse or neglect to furnish any information called for by the *department* in the performance of its official duties relating to the assessment and taxation of property the *department* shall make such determination and assessment of his or its property as in its judgment appears to be just and equitable, and may add to its assessment thus made not more than twenty per cent thereof as a penalty for such refusal or neglect to furnish any information called for by the *department* assessed of its action, either by registered mail or by personal service of such notice. Such action of the *department* and the assessment so made shall be final and conclusive unless the party so assessed, (1) shall, within twenty days after receiving such notice *file an appeal with the state tax appeal board* and show cause before the board why such assessment and penalty should be modified or annulled, when the board shall then from all information presented

to it or from its own investigation make such assessment as to it seems just and equitable; or, (2) unless the party assessed shall within sixty (60) days after receiving such notice, appeal to the district court of Lewis and Clark county from the action of the *department* in making such assessment and imposing such penalty by serving on the *department* and filing in the office of the clerk of said district court notice of appeal therefrom together with a bond conditioned for the payment of such amount as the judgment of said court may require within thirty (30) days after the entry of such judgment. Upon the hearing of such appeal the court *or the state tax appeal board* shall determine whether the *department of revenue* was entitled to inspect such books or records, or was entitled to the information requested by the *department,* and if the court *or board* shall find that the *department* was entitled to inspect such books or records or was entitled to the information requested by the *department,* the court *or board* shall not change or modify in any manner the assessment as made or the penalty added to such assessment by the *department* but if the court *or board* shall find that the *department* was not entitled to inspect such books or records, or was not entitled to the information requested by the *department,* then the court *or board* shall enter a judgment changing and modifying the assessment made by the *department* by striking out the penalty added thereto by the *department.*"

Section 59. Section 84-716, R.C.M. 1947, is amended to read as follows:

"84-716. **Hearings, witnesses, contempt, fees and subpoenas.** Oaths to witnesses in any investigation by the *department* may be administered by the *director of revenue or his agent.* In case any witness shall fail to obey any summons to appear before *the department,* or shall refuse to testify, or answer any material question, or to produce records, books, papers or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the board, or to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter, under consideration by the *department* shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the *department.*"

Section 60. Section 84-717, R.C.M. 1947, is amended to read as follows:

"84-717. **Seal.** The state *tax appeal board* shall have a seal and such seal shall have the following words engraved thereon, "*Tax Appeal Board* of the State of Montana." The board shall

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authenticate all of its orders, records and proceedings with such seal, and the courts of this state shall take judicial notice of such seal."

Section 61. Section 84-724, R.C.M. 1947, is amended to read as follows:

"84-724. **Destruction of tax records authorized — procedure.** Notwithstanding the provisions of any other chapter of this code, the state *department of revenue* is authorized to destroy tax records more than three (3) years old, as shall be determined to be of no further value.

Authorization for destruction of tax records shall be *by the director of revenue or authorized employees of the department of revenue.* A copy of the authorization and authenticated list shall be *maintained by the department of revenue.*"

Section 62(a). Section 84-802, R.C.M. 1947, is amended to read as follows:

"84-802. **Assessment, how made.** The state *department of revenue* must assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county. All rolling stock must be assessed in the name of the person, corporation, or association owning, leasing, or using the same. Assessment must be made to the corporation, person, or association of persons owning or leasing or using the same, and must be made upon the entire railroad within the state. The depots, stations, shops and buildings erected upon the space covered by the right of way, and all other property owned or leased by such person, corporation, or association, except as above provided, shall be assessed by *an agent of the state department of revenue in* the county wherein they are situate. After making such assessment, the *department* shall give written notice thereof to such owner or operator. *Within ten (10) days the* owner or operator, or any taxpayer, may appear *at* the *department of revenue* in person, or otherwise, to show cause why such assessment should be either lowered or raised. On or before the second Monday in July, the *department* shall apportion such assessment to the counties, school districts, cities, towns, and other tax subdivisions, in which such railroad is located."

Section 62(b). There is a new section to be numbered 84-802.1, R.C.M. 1947, which reads as follows:

84-802.1. Hearing before the state tax appeal board. Following the assessment by the department, any aggrieved party may appeal to the state tax appeal board according to the rules and regulations of said board.

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Section 63. Section 84-803, R.C.M. 1947, is amended to read as follows:

"84-803. **Duties of the state** *department of revenue* **respecting statement.** The state *department of revenue* must, within the time mentioned, in the preceding section, transmit by mail to the *agent of the department in* each county, to which such apportionment is made, a statement in detail sufficient for identification and location of the property, showing the assessed value per mile of the same, as fixed by a prorata distribution per mile of the assessed value of the whole franchise, roadway, roadbed, rails, and rolling stock of such railroad, within the state, and the amount apportioned to the county and to each taxing subdivision thereof. The *agent of the department of revenue in each county* must enter the statement on the assessment roll of the county."

Section 64. Section 84-902, R.C.M. 1947, is amended to read as follows:

"84-902. **Statement to be transmitted by** *agent of the department of revenue* to *the state department of revenue.* The *agent of the department* in every county must, on the first Monday in May of each year, transmit to the state *department of revenue* a statement showing:

1. The name and address of each corporation, person and association owning or operating any telegraph, telephone, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other similar property in more than one county of the state, whose property, or any part thereof, has been assessed by *the agent of the department.*

2. A complete description of all such property assessed to every such corporation, person, or association, together with the assessed value thereof.

3. After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made."

Section 65(a). Section 84-903, R.C.M. 1947, is amended to read as follows:

"84-903. **Hearing before the** *state tax appeal* **board.** After making such assessment, the *department* shall give written notice thereof to the person or persons to whom the assessment is made. *Within ten (10) days the* person or persons, or any taxpayer may appear *at* the *department of revenue* in person, or otherwise, to show cause why such assessment should be either lowered or raised."

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Section 65(b). There is a new section to be numbered 84-903.1, R.C.M. 1947, which reads as follows:

84-903.1. **Hearing before the state tax appeal board.** Following the assessment by the department, any aggrieved party may appeal to the state tax appeal board according to the rules and regulations of said board.

Section 66. Section 84-906, R.C.M. 1947, is amended to read as follows:

"84-906. **Transmission of statement of amount apportioned to counties.** The state *department of revenue,* must, not later than the second Monday of July, transmit or mail to the *agent of the department in* each county to which such apportionment has been made, a statement showing the length of the property in such county; a description of the same sufficient for identification; the assessed value of the same as determined by the *department;* and the amount apportioned to the county. The *agent of the department* must enter the statement on the assessment roll or book of the county, and enter the amount of the assessment apportioned to the county in the column of the assessment roll or book which shows the total value of all property for taxation in the county."

Section 67. Section 84-1505, R.C.M. 1947, is amended to read as follows:

"84-1505. **Assessment and collection of tax.** (1) Assessment and payment of tax, penalty and interest. All taxpayers shall compute the amount of tax payable under this act and shall remit such amount to the state *department of revenue* on or before the fifteenth day of the fifth month following the close of the taxable period. If the tax is not paid on or before the due date, there shall be assessed a penalty of ten per cent (10%) of the amount of the tax, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted, or otherwise, interest shall be added thereto at the rate of nine per cent (9%) per annum from the due date until paid.

(2) Levy upon and sale of property for payment of corporation licenses taxes. If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the *department* shall issue a warrant directed to the sheriff of any county of the state commending him to levy upon and sell the real and personal property of the corporation owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the *department*

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and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the corporation against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the *department* a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the *department* shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

(3) Action by attorney general. Action may be brought at any time by the attorney general of the state at the instance of the *department,* in the name of the state to recover the amount of any taxes, penalties and interest due under this act."

Section 68. Section 84-1508.1, R.C.M. 1947, is amended to read as follows:

"84-1508.1. **Determination of tax liability—interest on deficiencies and overpayment.** (a) Deficiency assessments. If, the state *department of revenue* determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within thirty (30) days after the mailing of the notice, the taxpayer may file with the state *department of revenue* a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its tax liability. If no protest is filed, the

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amount of the additional tax proposed to be assessed becomes final upon the expiration of the thirty (30) day period. If such protest is filed, the state *department of revenue* shall reconsider the proposed assessment, and if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the state *department of revenue's* action upon the protest is final when it mails notice of its action to the taxpayer.

When a deficiency is determined and the tax becomes final, the state *department of revenue* shall mail notice and demand to the taxpayer for the payment thereof, and the tax shall be due and payable at the expiration of ten (10) days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest from the date specified in section 84-1505 for payment of the tax. A certificate by the state *department of revenue* of the mailing of the notices specified in this subsection shall be prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notices.

(b) Overpayment of tax—refunds and credits. If the state *department of revenue* determines that the amount of tax, penalty or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger or consolidation, or to its shareholders upon dissolution.

If the state *department of revenue* disallows any claim for refund, it shall notify the taxpayer accordingly. At the expiration of thirty (30) days from the mailing of the notice, the state *department of revenue's* action shall become final, unless within the said thirty (30) day period the taxpayer appeals in writing from the action of said *department to the state tax appeal board.* If such appeal is made, the state *tax appeal board* shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented, the state *tax appeal board* shall forthwith mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer.

(c) Except as hereinafter provided for, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of overpayment (whichever date is later) to the date the *department of revenue* approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the

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state *department of revenue* for the purpose of verifying the amount of the overpayment. No interest shall be allowed (1) if the overpayment is refunded within six (6) months from the date the return is due or from the date the return is filed, whichever is later; or (2) if the amount of interest is less than one dollar ($1.00).

A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable."

Section 69. Section 84-1704, R.C.M. 1947, is amended to read as follows:

"84-1704. **Procedure in case of failure to make statement.** In case of failure or refusal of any express company to make the statement required by law or furnish the *department* any information required by it, the *department* shall inform itself as best it may on the matters necessary to be known in order to discharge its duty, and at any time before the gross receipts of any express company for business done within the state are determined, any person, company or corporation interested shall have the right, on written application, to appear before the *department* and be heard on the matter of such determination. After the determination of the amount of the gross receipts of any express company for business done in the state and before the certification of such amount by *the department*, the *department* may, on the application of any person, company or corporation interested, or on its own motion, review and correct its findings in such manner as may seem to it to be just and proper."

Section 70. Section 84-1706, R.C.M. 1947, is amended to read as follows:

"84-1706. **State** *department of revenue* **authorized to require production of books.** The state *department of revenue* shall have power to require the president, secretary, treasurer, receiver, superintendent, managing agent or other officer or employee or agent of any express company engaged in an express company business to attend before the *department* and bring with him for inspection any books or papers of such company in his possession or under his control and to testify under oath on any matter relating to the organization or business of such express company. *The director of revenue or his appointed agent* is authorized and empowered to administer such oath. Any person who shall refuse to attend before the *department* when subpoenaed so to do, or shall refuse to bring with him and submit for the inspection of the board any books or papers in his possession, custody or control,

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or shall refuse to answer any questions put to him by the *department* affecting the organization or business of the express company under investigation shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than five hundred dollars nor less than one hundred dollars."

Section 71. Section 84-1833, R.C.M. 1947, is amended to read as follows:

"84-1833. **Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.** (a) Require: It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncanceled fuel dealers' license issued to him by the *department.*

Every special fuel user shall obtain from the *department,* prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel users' license, and a special fuel vehicle permit for each such vehicle or vehicles operated by him upon the highways as herein defined, which permit shall at all times be carried in the vehicle for which it was issued, and shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, any authorized employee of *the department of revenue,* or any other law enforcement officer.

Any out of state user who operates a recreational passenger car, pickup truck or family motor coach powered by special fuels shall secure a special fuel user's "Courtesy" vehicle permit. The permit shall not be transferable and shall be valid for ninety (90) days. Permits will be issued at no cost to the user by the *department of revenue,* scale house personnel and gross vehicle weight patrol crews. The *department* may require the user who has fuel capacity in excess of thirty (30) gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(b) Application: Application for a special fuel dealer's license, a special fuel user's license, or a special fuel vehicle permit shall be made to the board unless otherwise provided herein.

(c) Form of application: The application shall be filed upon a form prepared and furnished by the *department.* The application shall contain such information as the *department* deems necessary.

(d) Bond: Except as herein provided, no special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in section 84-1831 (i) and in such form as the *department* may require to secure its compliance with this act, and the payment of any and all taxes, interest and penalties due and to become

due hereunder. Upon application, the *department* may waive the bond requirement of any resident special fuel user who establishes to the reasonable satisfaction of the board that the tax as herein provided is not delinquent or that interest or penalties are not accrued under the provisions of this act.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to twice his estimated monthly tax payments as hereinafter provided, determined in such manner as *the department* may deem proper; provided, however, that the total amount of the bond or bonds shall never be less than five thousand dollars ($5,000) for any special fuel user awarded a contract in accordance with section 84-1832.1, nor less than five hundred dollars ($500) for any other special fuel user; and not less than one thousand dollars ($1,000) for a special fuel dealer.

(e) Issuance: Upon receipt of the application and bond in proper form, the *department* shall issue to the applicant a license to act as a special fuel dealer or special fuel user or a special fuel vehicle permit; provided, however, the *department* may refuse to issue a special fuel dealer's license, a special fuel user's license or a special fuel vehicle permit to any person: (1) who formerly held either type of license or permit which, prior to the time of filing application has been revoked for cause; or (2) who is not the real party in interest and where the license or permit of the real party in interest has been revoked for cause prior to the time of filing such application; or (3) upon other sufficient cause being shown. Before such refusal, the *department* shall grant the applicant a hearing and shall grant him at least ten (10) days' written notice of the time and place thereof.

(f) Expiration of license or permit: Each special fuel dealer's license, special fuel user's license and special fuel vehicle permit shall be valid until suspended or revoked for cause or otherwise canceled.

(g) Assignment forbidden: No special fuel dealer's license, special fuel user's license or special fuel vehicle permit shall be transferable.

(h) Revocation, suspension, cancellation and surrender of license and permit: The *department* may revoke the license of any special fuel dealer or special fuel user or any special fuel vehicle permit, for reasonable cause. Before revoking such license or permit, the *department* shall notify the licensee or permittee of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the *department*, requiring him to appear before the *department* on a day and hour

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specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them, should not be revoked; provided, however, that at any time prior to and pending such hearing the *department* may, in the exercise of reasonable discretion, suspend such license or permit.

Upon revocation by the *department* of any such license or permit, the holder thereof shall immediately surrender the same to the *department* for cancellation; and the holder of any such permit, having permanently discontinued the use of any vehicle for which the permit was issued, for whatever reason, shall immediately surrender the same to the *department* for cancellation.

The *department* shall cancel any license to act as a special fuel dealer or a special fuel user or any special fuel vehicle permit immediately upon surrender thereof by the holder.

(i) Release of surety: Any surety on a bond furnished by a special fuel dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the *department* a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty (30) day period. The *department* shall promptly upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user shall, on or before the expiration of the thirty (30) day period, file a new bond, in accordance with the requirements of this section, or make a deposit in lieu thereof as provided in section 84-1831 (i), the *department* forthwith shall cancel the special fuel dealer's or special fuel user's license.

(j) Additional bond or deposit: The *department* may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in section 84-1831 (i), if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate; and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within thirty (30) days after being requested so to do by the *department*, said *department* forthwith shall cancel his license.

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(k) All special fuel taxes due from any dealer or user under the provisions of this act, together with all penalties and interest thereon shall be a lien upon any and all property of such dealer, user or other person upon the filing by the state *department of revenue* of a duplicate copy of the statement so made by the state *department of revenue,* or a certified copy of any statement filed by said *department* in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law."

Section 72. Section 84-2009, R.C.M. 1947, is amended to read as follows:

"84-2009. **False or erroneous statements—investigation concerning.** (1) Should the state *director of the department of revenue* have reason to believe that any statement and return is false, or erroneous in any particular, it may require the person, or if made by a corporation, association or company, the officers thereof, and the employees of any such person, corporation, association or company, to appear before the *director of revenue or his agent* and testify concerning the same and any statement contained therein, and may examine all books, records, papers and documents of such person pertaining to such business, upon giving five days' written notice to such persons, or officers or employees thereof having custody of such books, records, papers and documents, and any person failing, refusing or neglecting to so appear, or refusing to be sworn or to testify, or refusing to answer any material question propounded by the *director* or any of *his employees,* or refusing to permit the *director,* or *his employees* to examine such books, records, papers or documents, or any thereof, pertaining to such business, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. If the *director,* after hearing such evidence and after such examination of the books, papers, documents and records of such person, shall find and determine that such statement and return is erroneous or false in any material matter, the *director* shall change and correct the same so as to show the true gross value of product and shall reassess the amount of the license tax due from such person, and may add thereto a penalty of not exceeding fifty per centum, and shall thereupon immediately certify the amount of such license tax with the penalty added thereto to the state treasurer, and shall at the same time mail to such person a written notice of the corrections and changes made in such

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statement and return and the amount of the license tax and penalty certified to the state treasurer.

(2) The state treasurer shall collect such license tax with penalty added, and if the same has become delinquent he shall also collect interest thereon from the date of delinquency until paid at the rate of twelve per centum per annum. Provided further, that in order to verify such statement and return the state *department of revenue* may require any person, corporation, association, or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced from any mine or mining property in the state of Montana to appear before the *director of revenue* and testify concerning the gross mineral content of any such ore, or at the request of said *director* to furnish sworn statements showing the gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold, silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by such statement, without any deductions whatsoever for smelting, milling, reduction or treatment of such ores or mineral product.

(3) The books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana shall be open to inspection and examination by the *director of revenue or his* employees at any time or place that *the director* may designate.

(4) If any person required by this act to make or file any statement, or to verify, under oath any statement, shall make such statement false in any material respect, or shall verify, under oath, any statement false in any respect or shall fail, neglect or refuse to file any statement required by said state *department of revenue* or shall refuse to appear before the *director of revenue* to testify concerning the gross mineral content of any such ore, or shall refuse to allow the *director or his* employees at any time or place to inspect or examine the books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment."

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Section 73. Section 84-2010, R.C.M. 1947, is amended to read as follows:

"84-2010. *Hearing* **on determination of value of gross product or amount of tax.** Every person whose license tax has been determined and assessed by the state *department of revenue* under any of the provisions of this act, who shall feel aggrieved by the determination and assessment of the *department* as to the amount of gross value of product, or as to the amount of the license tax, may, at any time within ten days after the date of notice thereof, required to be given to such person, file with the *state tax appeal* board a petition for a *hearing* in which petition must be stated and set forth particularly and specifically the grounds and reasons therefor, and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the *state tax appeal* board therefrom that the *department of revenue* has erred in any manner in ascertaining and determining the amount of the gross value of product, or the amount of the license tax, or both, the board shall immediately correct such error, or errors, and if such correction shall be in conformity with the request contained in the petition for a *hearing* the board shall take no further steps in connection with such petition, other than to certify to the state treasurer the amount of the license tax due from such person after the making of such correction, and notifying such person thereof. If, from such examination, it does not appear to the satisfaction of the *state tax appeal* board that *the department of revenue* has erred in any manner the board shall grant *the hearing,* fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board may deem reasonable. On such hearing such person, any taxpayer interested, and the *department of revenue* may introduce witnesses and *present* testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product, and reassess the amount of the license tax to be paid by such person, and give notice thereof in the manner required by section 84-2006."

Section 74. Section 84-3804, R.C.M. 1947, is amended to read as follows:

"84-3804. **Increase of state tax levy—support units of university.** Upon the approval of the electors of this state, to be determined by their vote at the general election to be held in November of 1968, the legislative assembly shall levy a property tax of not more than six (6) mills on the taxable value of all real and personal property each year for ten (10) years beginning

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with the year 1969. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system."

Section 75. Section 84-3808, R.C.M. 1947, is amended to read as follows:

"84-3808. **Tax on personal property lien on realty—separate assessment.** (a). Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof, from and after 12 m. of the first Monday in March in each year.

(b). The taxes upon personal property based upon a taxable value up to and including one thousand dollars ($1000.00) shall be a first and prior lien upon the real property of the owner of such personal property; taxes upon personal property based upon the taxable value thereof in excess of one thousand dollars ($1000.00) shall be a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon said real property appearing of record in the office of the clerk and ex officio recorder of the county where such real property is situated at or before the time such personal property tax attached thereto shall have filed the notice hereinafter provided for, in which event the taxes upon such excess of one thousand dollars ($1000.00), of taxable value shall not be a lien on the real property of such owner. It shall be the duty of the county treasurer to issue to any mortgagee or lien holder, upon his request, a statement of the personal property tax due upon the taxable value up to and including one thousand dollars ($1000.00); and personal property taxes upon a taxable value up to one thousand dollars ($1000.00) may be paid, redeemed from a tax sale as by law provided, or discharged separate from any personal property taxes in excess of such amount. Payment of such taxes upon a taxable value up to one thousand dollars ($1000.00) as herein provided, shall operate to discharge the tax lien upon the personal property of the owner to the extent of such payment in the order that the person paying such tax shall direct.

(c). The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file in the office of the county treasurer of said county a notice giving;

(1) the name and address of the mortgagee and holder of the mortgage or lien;

(2) the name of the reputed owner of the land;

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(3) the description of the land;

(4) the date of record and expiration of the mortgage or lien;

(5) the amount thereof; and

(6) a statement that he claims the benefit of the provisions of this section; and such notice shall be ineffectual as to any taxes which shall have become a lien on real property prior to the filing of such notice as aforesaid. If the mortgage be not paid at maturity, such notice shall thereafter be filed annually, unless the mortgage be extended for a definite period to be stated in such notice.

(d). Provided, that any owner of a mortgage on real estate upon which personal property taxes are by this act made a lien, and where the owner of such real estate and personal property has failed to pay taxes due upon such real estate and personal property for one or more years, may file with the *department of revenue or its agent in* the county in which such property is located a written request to have the personal property and real estate of the owner separately assessed. Such request must be made by registered mail at least ten (10) days prior to the first Monday in March in the year for which property is assessed. Upon receipt by the *department of revenue or its agent* of such request, it is hereby made the duty of the *department of revenue or its agent* to make a separate assessment of real and personal property of the owner thereof and such personal taxes shall not be a lien upon the real estate so mortgaged of the owner thereof and the said personal property taxes shall be collected in the manner provided by law for other personal property."

Section 76. Section 84-4001, R.C.M. 1947, is amended to read as follows:

"84-4001. *Department of revenue or its agent* **to enter valuations on assessment book.** Before delivering the assessment book to the county clerk as required by section 84-505 the *department of revenue or its agent* must proceed to add up the valuations, and enter the total valuation of each kind of property, and the total valuation of all property, on the assessment book. The column of acres must show the total acreage of the county."

Section 77. Section 84-4002, R.C.M. 1947, is amended to read as follows:

"84-4002. **County clerk to prepare duplicate statement.** The county clerk must, on or before the second Monday in August of each year, prepare from the assessment book of such year, as corrected by the *department of revenue or its agent,* duplicate statements, showing in separate columns:

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1. The total value of all property;

2. The value of real estate, including mining claims, stated separately;

3. The value of the improvements thereon;

4. The value of personal property, exclusive of money;

5. The amount of money;

6. The number of acres of land, and the number of mining claims, stated separately."

Section 78. Section 84-4004, R.C.M. 1947, is amended to read as follows:

"84-4004. **County clerk to follow directions of state** *department of revenue, county or state tax appeal boards.* As soon as the county clerk receives from the state *department of revenue, county or state tax appeal boards* a statement of any change or changes made by the *department or boards* in the assessment books of the county, or in any assessment therein contained, he must make the corresponding change or changes in the assessment books, by entering the same in a column provided with a proper heading in the assessment books, counting any fractional sum, when more than fifty cents as one dollar, and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fractions of a dollar; but he must in all cases disregard any action of the *county tax appeal board* which is prohibited by section 84-413; provided, however, that if such assessment books are not in the possession of the county clerk at the time he receives any such statement, he must immediately make a copy thereof, attesting the same with his seal of office, and deliver such attested copy to the county *or state* officer then having possession of such assessment books, and it shall be the duty of such county *or state* officer to immediately make the corresponding change or changes in such assessment in the manner herein provided."

Section 79. Section 84-4005, R.C.M. 1947, is amended to read as follows:

"84-4005. *Department of revenue or its agent* **to compute and enter taxes—affidavit.** The *department of revenue or its agent* must then compute, and enter in a separate money column in the assessment book, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and foot up the columns showing the total amount of such taxes, and the columns of total value of property in the county, and shall attach thereto his affidavit, by him subscribed as follows:

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"I, ..., *an agent of the department of revenue* do swear that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes and acreage, as required by law, and the said assessment book to which this affidavit is affixed is full, true and correct, and made in the manner prescribed by law," and shall on or before the second Monday of October deliver the completed assessment book to the county clerk."

Section 80. Section 84-4006, R.C.M. 1947, is amended to read as follows:

"84-4006. **County clerk's affidavit—delivery of book to** *department of revenue or its agent.* That within five (5) days after the second Monday in August the county clerk must attach to the book the following affidavit:

"I, ..., county clerk of the county of ....., do swear that I received the assessment book of the taxable property of the county from the *department of revenue or its agent* with his affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the county and state *tax appeal boards,*" and deliver the book to the *department of revenue or its agent.*"

Section 81. Section 84-4013, R.C.M. 1947, is amended to read as follows:

"84-4013. **State** *department of revenue* **may dispense with duplicate.** The state *department of revenue* may, by an order certified to the county clerk of any county in the state, dispense with the duplicate assessment book in such county, in which event the original assessment book must perform all the offices of such duplicate, and must have like force and effect."

Section 82. Section 84-4201, R.C.M. 1947, is amended to read as follows:

"84-4201. **Duty of** *department of revenue or its agent.* It shall be the duty of the *department of revenue or its agent,* upon discovery of any personal property in the county, the taxes upon which are not a lien upon real property sufficient to secure the payment of such taxes, to immediately, and in any event not more than five days thereafter, make a report to the treasurer, setting forth the nature, kind, description and character of such property in such a definite manner that the treasurer can identify the same, the amount and assessed valuation of such property, where the same is located, the amount of taxes due thereon, and the name and address of the owner, claimant, or other person in possession of the same. Where such personal property is located in any city or town,

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which shall have provided by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city or town treasurer, also and at the same time furnish to said city or town treasurer a duplicate of such notice to the county treasurer. For the purpose of determining the taxes due on such personal property, the *department or its agent* must use the levy made during the previous year."

Section 83. Section 84-4202, R.C.M. 1947, is amended to read as follows:

"84-4202. **Duty of treasurer.** The county treasurer must collect taxes on all personal property, and in the case provided in in the preceding section, it shall be the duty of the treasurer immediately upon receipt of *the* report *prescribed by section 84-4201, R.C.M. 1947,* to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. The county treasurer must, at the time of receiving the report, and in any event within thirty (30) days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed, or any other personal property in the hands of the delinquent taxpayer, and proceed to sell the same, in the same manner as property is sold on execution by the sheriff, and the county treasurer may for the purpose of making such levy and sale, direct the sheriff to make such levy and sale, and the sheriff, undersheriff, or any deputy sheriff of such county is, ex officio, a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. Such sheriff shall be entitled to receive the same fees as he is entitled to in making a seizure and sale under execution.

The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the willfull failure and neglect of such treasurer to levy upon and sell such personal property for the taxes levied thereon.

The tax on such personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any or all of the methods herein provided for may be used until the full amount of such tax is collected.

The county shall have a general lien, dependent on possession,

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upon any moneys in its possession belonging to any taxpayer, for any amounts due said county for any delinquent personal property taxes not a lien on real estate, of said taxpayer; provided, however, that due notice must be given the lien holder, if any."

Section 84. Section 84-4211, R.C.M. 1947, is amended to read as follows:

"84-4211. *Department of revenue or its agent* **to note report of property.** The *department of revenue or its agent* must note on the assessment book opposite the names of each person owning, claiming, or possessing such personal property which may be so reported by him to the treasurer, the fact that such report was made to the treasurer, and the date when the same was so made."

Section 85. Section 84-4503, R.C.M. 1947, is amended to read as follows:

"84-4503. **Assessment for taxation—increase over statement of owner.** Whenever any person has delivered to the *department of revenue or its agent* a sworn statement of his property subject to taxation as now provided by law, and giving the estimated value of such property, and the *department or its agent* shall increase such estimated value, or add other property to such assessment list, *the agent* shall, at least ten days prior to the meeting of the county tax appeal board, give to such person written notice of such change which notice shall be substantially in the following form:

Date.....

Mr. .....

A change has been made in your assessment list as follows:

(set out and describe specifically changes made in list.)

....., *Agent*

Department of Revenue

Such person may then appear before the county *tax appeal board* and contest the same; and if the assessment of any such person has been added to or changed, either by the *department of revenue* or by the county *tax appeal board,* and such person has not been notified thereof and given an opportunity to contest the same before the county *tax appeal board,* the tax on such increased value or added property shall, upon such facts being established, be adjudged by the court to be void, and such facts and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in section 84-4502. When any person has appeared before the county *tax appeal board* and has contested the increase in the estimated value of his property, or the addition of other property to his assessment list, and has.

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appealed to the state *tax appeal board* from any action or decision with reference thereto by the county *tax appeal board* and such person is aggrieved at the final action of the state *tax appeal board* in making or allowing such increase or addition, he may pay the tax on such increase or addition or the installments thereof if payable in installments, under protest in the manner provided by section 84-4502, and thereupon, and within the time prescribed and in the manner provided by said section 84-4502, may commence an action to recover such tax, or installments, and in such action contest and litigate the payment of such taxes on such increased value or added property, on the same grounds and for the same reasons that he has contested the same before the county and state *tax appeal boards,* and for no other reasons and on no other grounds; provided, that all of the provisions of section 84-4502 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section."

Section 86. Section 84-4604, R.C.M. 1947, is amended to read as follows:

"84-4604. **Statements to be furnished by officers.** The cashier of every national bank shall make and deliver to the *department of revenue or its agents in* the county in which said bank is located, within five days after demand therefor, a statement, verified by his oath, showing the name of each shareholder, with his residence and the number of shares belonging to him at the close of business the day next preceding the first Monday in March, in each year, as the same then appeared on the books of said bank, and showing the face value of the capital stock, and the amount of surplus and undivided profits of said bank, and an estimate of the value for which such stock shall be assessed. If said cashier fails to make such statement as required, the *department of revenue or its agents* shall forthwith obtain said information from the officers of the bank and for this purpose shall have access to the books of the bank, and the *department or its agents* shall therefor make an assessment of such stock, which shall be as fair and equitable as *can be made* from the best information available, or the figures disclosed by any prior report of the officers or directors of the bank, made to any state or federal officer to whom such bank is by law required to make reports, *may be adopted.*

Section 87. Section 84-4605, R.C.M. 1947, is amended to read as follows:

"84-4605. **Taxation of banks and shares of stock in.** (1) Every state bank or banking corporation located and doing business in this state, and every private banker doing business in this state, shall be taxable upon the value of all real estate and personal property owned by such bank, banking corporation or pri-

vate banker, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained as provided by section 84-301; and the cashier or secretary of every such bank or banking corporation, and every such private banker, shall furnish to the *department of revenue or its agent in* the county in which its or his bank is located, within five days after demand therefor, a statement verified by his oath, showing all the resources and liabilities of such bank as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year; if such cashier, secretary or private banker shall fail to make the statement hereby required, the *department or its agent* shall forthwith obtain such information from any other available source, and for this purpose shall have access to the books of such bank, banking corporation or private banker. The *department or its agent* shall thereupon make an assessment of the real estate and personal property owned by such bank, banking corporation or private banker, and of the moneyed capital employed in the business of such bank, banking corporation or private banker, which assessment shall be as fair and equitable as *can be made* from the best information available, or, for the purpose of said assessment the figures disclosed by any prior report made by such bank, banking corporation or private banker to any state or federal officer pursuant to any state or federal law *may be adopted.* Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

(2) All shares of stock in any such bank or banking corporation shall be assessed at their full cash value, except to the extent that that value is represented in property which is assessable and taxable to such bank or banking corporation in this state, and shall be taxable to the owners of such shares in the county, school district, city, town, or place where such bank or banking corporation is located and not elsewhere, whether or not the owners of such shares are residents of such county, school district, city, town or place.

(3) The cashier or secretary of any such bank or banking corporation shall furnish to the *department or its agent,* upon demand, the name of each stockholder with his residence and the number of shares belonging to him at twelve o'clock noon of the first Monday in March of each year; and if such cashier or secretary, for more than five days after such demand, shall fail to furnish such information, he shall be guilty of a misdemeanor and the *department or its agent* may obtain such information from any other available source, and for such purposes shall have access to the books of such bank or banking corporation. For convenience the assessment of such shares shall be entered on the personal property assessment list under the name of the bank or banking corporation.

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concerned, but in the assessment list the names of the owners of such shares shall be set forth and the number of shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the names of the owners of such shares individually. The bank or banking corporation in which such shares are owned shall be liable for the payment of taxes assessed against such shares, and such taxes shall be payable by and may be collected from such bank or banking corporation in the same manner and under the same penalties as other taxes; provided that such bank or banking corporation may recover from such owners of shares any taxes so paid on such shares, and shall have a lien therefor upon such shares and upon any dividends accrued or to accrue thereon."

Section 88. Section 84-4606, R.C.M. 1947, is amended to read as follows:

"84-4606. **Banks with offices in more than one county—assessment and apportionment of tax.** Any state or national bank, banking corporation, or private bank, the stock, moneyed capital, or moneys and credits of which are subject to taxation under the provisions of chapter 3 and chapter 46, Title 84, Revised Codes of Montana, 1947, and which has banking offices in more than one (1) county, shall furnish to the *department of revenue or its agent in* each such county the information required of it by chapter 46. Title 84, Revised Codes of Montana, 1947, together with a statement of the book value of real estate owned and located in the respective counties and a statement of the deposit liability shown by the books of account of said bank at each of its said banking offices at the close of business the day next preceding the first Monday in March; and the aggregate tax on the stock, moneyed capital, and moneys and credits of such bank computed as provided by law shall be assessed by and be paid to the respective counties in the proportion which the amount of the deposit liability shown on the books of the office or offices of such bank located in such counuties, respectiviely, shall bear to the total deposit liability of such bank."

Section 89. Section 84-4713, R.C.M. 1947, is amended to read as follows:

"84-4713. **Taxes in cities and towns which have exceeded the *statutory* limit of indebtedness.** All taxes heretorfore levied and collected, or to be collected for municipal and administrative purposes by any city or town, the indebtedness of which equals or exceeds the limit provided *in statute,* may be used in payment of current expenses during the fiscal year for which said taxes were levied, the same as though a special levy had been made for each of said purposes. And the council of any such city or town is

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hereby authorized to designate the amount of said general levy applicable to each of said purposes, and the amount so designated shall constitute a special fund for the special purpose of paying the expenses incurred for such purpose, and such expenses shall be payable out of such fund and not otherwise; provided, that the aggregate of all taxes authorized for general municpial and administrative purposes shall not exceed one and one-half per cent annually upon the per centum of the assessed value of all taxable property in such city or town."

Section 90. Section 84-4715, R.C.M. 1947, is amended to read as follows:

"84-4715. **Annual tax—collection.** The council has power to levy, *and* collect, annually taxes on all the property in the city or town taxable for state and county purposes, and may by ordinance provide for the levy and collection of the same."

Section 91. Section 84-4716, R.C.M. 1947, is amended to read as follows:

"84-4716. **Levy, etc., to be made under this chapter.** Until the passage of such ordinance the levy and collection of municipal taxes are, and the proceedings for such purposes must be as provided in this chapter."

Section 92. Section 84-4717, R.C.M. 1947, is amended to read as follows:

"84-4717. **Basis of taxation.** The assessment made by the *department of revenue or its agent* for state and county purposes is the basis of taxation for cities and towns for the property situated therein."

Section 93. Section 84-4718, R.C.M. 1947, is amended to read as follows:

"84-4718. **Duty of** *department of revenue.* It is the duty of the *department of revenue or its agent,* in making the assessment book, to designate therein the real and personal property, stating each separately and distinctly, situated in cities and towns within *each* county *in the state."*

Section 94. Section 84-4719, R.C.M. 1947, is amended to read as follows:

"84-4719. **Copies of assessment books to be furnished cities and towns.** On or before the second Monday in July of each year the *department or its agent* must furnish to all cities of the third class and towns within *each* county which shall make written request for the same, on or before the first Monday in April of each

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year, a complete certified copy of *the* assessment book, so far as such assessment book pertains to property within the limits of said cities and towns."

Section 95. Section 84-4720, R.C.M. 1947, is amended to read as follows:

"84-4720. **Charge of *department* for making copies.** The *department* may charge such cities and towns five cents per folio of one hundred words for each copy of *the* assessment book furnished such cities and towns as provided in the preceding section."

Section 96. Section 84-4721, R.C.M. 1947, is amended to read as follows:

"84-4721. **Equalization of taxes.** The equalization of assessments of property made by the *state department of revenue* applies to the assessment of property in any city or town, and must be taken as the equalization thereof."

Section 97. Section 84-4822, R.C.M. 1947, is amended to read as follows:

"84-4822. **Ad valorem tax basis—complaints—notice—testimony—hearing—refunds—valuation of cars as unit.** It is hereby declared to be the intention of the legislature that the tax herein imposed be not greater than the amount of tax such freight line company would pay if its cars were taxed on an ad valorem basis. No tax other than as in this act imposed shall be assessed against the business or income of any such freight line company. Any such freight line company or railroad company, on or before June 1st of the year in which the tax herein imposed has been paid, may file written complaint with the *state tax appeal* board concerning the correctness of the rate used, or the correctness of the amount of the tax imposed, or any other matter affecting the complaintant under the provisions of this act. Upon filing such complaint, the *state tax appeal* board shall set the same for hearing, and shall give written notice thereof to the complaintant at least ten (10) days before the date set for hearing thereon. Upon the hearing of any such complaint, the *state tax appeal* board shall take testimony to determine whether the amount of the tax, as computed and determined by the *department of revenue,* is greater than the general ad valorem tax for all purposes would be on the cars of such freight line company subject to taxation in Montana, if assessed and taxed on an ad valorem basis. In such cases the *state tax appeal* board shall have the power, and it shall be its duty, to lower or raise the rates herein specified to conform to the facts disclosed at such hearing and to make the amount of the tax due equivalent to such ad valorem tax. If the *state tax appeal* board shall then

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determine that the amount of the tax imposed and collected was excessive, the claimant shall be entitled to a refund to the extent of such excess. Within six (6) months after such determination the claimant may present to the state *department of revenue* a sworn claim for such refund, setting forth the amount thereof. *The* state auditor shall draw his warrant upon the state treasurer for the amount of such claim and the same shall be paid out of the freight line company tax fund created by this act, in the same manner as other claims against the state are paid. In order to determine the amount of tax such freight line company would pay, *the department* may value all cars of any such company as a unit and allocate to Montana that proportion of the total value which the Montana car mileage bears to the total car mileage of the cars of any such freight line company during the twelve (12) months' period ending December 31 of the preceding year, and may then apply to such value, the average total rate of all general property taxes levied for the preceding year by the taxing authorities of the state, counties, school districts, municipalities and other taxing subdivisions for state, county, school and municipal and other purposes."

Section 98. Section 84-4824, R.C.M. 1947, is amended to read as follows:

"84-4824. **Actions to recover delinquent taxes and penalties —additional taxes.** If the taxes and penalties provided for in this act to be paid by the railroad company on the property of such freight line company remain unpaid more than ninety (90) days from the due date, the *department* shall cause an action to be brought to recover the amount of such delinquent taxes and penalties in the district court of any county within the state of Montana in which service can be had on the railroad company which is liable for the payment of such taxes or penalties, or in which the property of such delinquent railroad company can be seized under attachment or garnishment proceedings in the manner prescribed by law. In the event the *state tax appeal* board under its authority to raise or lower the rate of the taxes which would be payable on the cars of such freight line company if taxed upon an ad valorem basis, shall, after a hearing as herein provided, find taxes due from any such freight line company in excess of the five per cent (5%) of all gross revenue in this state which is required to be paid by the railroad companies, such additional tax as so determined shall be due and payable by the freight line company upon which the assessment is made, and if such tax shall remain unpaid for more than ninety (90) days after notification of such assessment by the *state tax appeal* board, the board shall cause an action to be brought to recover the amount of such additional tax in the district court of any county within the state of Montana in which service can be had on the freight line company liable for the

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tax or in which the property of such delinquent freight line company can be seized under attachment or garnishment proceedings in the manner prescribed by law."

Section 99. Section 84-4825, R.C.M. 1947, is amended to read as follows:

"84-4825. **Disposition of moneys—refund claims.** All taxes collected under the provisions of this act shall be credited by the state treasurer to the state general fund. An action or proceeding in court to determine the correctness of such tax must be instituted within sixty (60) days after the payment of the tax."

Section 100. Section 84-4903.11, R.C.M. 1947, is amended to read as follows:

"84-4903.11. **Nonresident ad valorem taxpayers—list—duty of** *state department of revenue or its agent.* It shall be the duty of the *department of revenue or its agent in* every county in this state to prepare annually a list showing the names and addresses of all nonresident ad valorem taxpayers in his county, as shown on the current assessment roll, and forward such list to the state *department of revenue* after the completion of the roll on the second Monday in July but not later than September *30* of each year."

Section 101(a). Section 84-4921, R.C.M. 1947, is amended to read as follows:

"84-4921. **Oaths may be administered by** *directed of revenue* **and** *designated* **employees.** The *director* and each *employee designated by him* may administer an oath to any person, or take the acknowledgement of any person in respect to any report or return required by or pursuant to this act, or by the rules and regulations of the *department.*"

Section 102. Section 84-4922 (2295.22), R.C.M. 1947, is amended to read as follows:

"84-4922. (2295.22) **Revision—application—hearing—adjustment.** *An application for revision may be filed with the department of revenue by a taxpayer within five (5) years from the original due date of the return. If the taxpayer is not satisfied with the action taken by the department, he may appeal to the state tax appeal board as provided therein, which shall have authority to grant the claim or any part thereof."*

Section 103. Section 84-4923.1, R.C.M. 1947, is amended to read as follows:

"84-4923.1. **Review by court. The determination of the state** *department of revenue* may be reviewed in the district court for

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Lewis and Clark county or the county in which the taxpayer resides or has his principal office or place of business, by a complaint filed by the taxpayer against the state *department of revenue* within six (6) months after the receipt of notice of the decision of the state *department of revenue.* Upon the serving of summons upon the state *department of revenue* as in civil action, the cause shall proceed as other civil cases. Service upon the state *department of revenue* may be made by serving one copy upon the *director of the department of revenue.* The remedies provided by this chapter for the collection of the tax shall be stayed and no assessment, distraint or proceedings in court for collection of the taxes shall be made, begun or prosecuted until ninety (90) days after such court action is finally determined. From any determination of such court, an appeal to the supreme court may be taken by either party."

Section 104. Section 84-5202, R.C.M. 1947, is amended to read as follows:

"84-5202. **Assessment of migratory livestock.** All livestock pastured, ranged or grazed, or which does pasture, range or graze in any county or counties of the state during any year, other than the county wherein the said livestock is usually kept by the owner thereof on lands claimed by him, to be known as the home county, shall be assessed for taxation, and such tax collected in the county in which it is found at the time fixed by law for the assessment of all property in the state, at the rate of levy of the home county, and it shall be the duty of the owner thereof, or his agent, at the time of assessment of such livestock, to make and deliver to the *state department of revenue or its agent in* the county where such livestock is found, and to the *department of revenue or its agent in* the home county, a written statement, under oath, showing the different kinds of such livestock within such county belonging to him or under his charge, with their marks and brands, and showing the full time during the current year that such livestock and every part, portion and kind thereof, has been and will be, within any county or counties, other than the home county, and such livestock and the owner thereof, shall be liable to the said county or counties for the taxes thereon, as other property is liable, and the taxes thereon shall be apportioned between the home county and such other county or counties as hereinafter provided; provided, however, that the tax on all livestock fed in feeding pens or other enclosures in any county or counties other than the home county of such livestock, shall not be apportioned as provided herein, but shall be paid in full to the county treasurer of the home county of such livestock."

Section 105. Section 84-5203, R.C.M. 1947, is amended to read as follows:

"84-5203. **Duty of owner when livestock is removed from**

home county to another county. Whenever such livestock is removed, kept, fed, or pastured, or permitted to range or graze, or does range or graze in any county other than its home county, the owner thereof, or the person in charge, or his agent, shall, within fifteen days from the time any such stock enters such other county, deliver to the *department of revenue or its agent in* such county, and to the *department or its agent in* the home county, a written statement, under oath, similar in all respects, as far as practicable, to the statement required at the time of the assessment."

Section 106. Section 84-5205, R.C.M. 1947, is amended to read as follows:

"84-5205. **Collection and disposition of proceeds of taxes.** The *department or its agent* shall indicate on the assessment roll livestock which has or will be kept, fed, pastured, ranged, or grazed in more than one county, and the treasurer, on collecting the taxes thereon in the county in which the same is assessed, shall remit the portion levied for state purposes, as in case of other taxes levied by the state of Montana, and shall place *the department or its agent* the remainder of the tax in a separate fund, known as the migratory stock fund, which shall be subject to distribution as hereinafter provided."

Section 107. Section 84-5206, R.C.M. 1947, is amended to read as follows:

"84-5206. **Distribution of migratory stock fund.** At the regular meeting in July of the board of county commissioners, the *department of revenue or its agent* shall transmit to the board all information filed with *the department* or in *its* possession concerning stock assessed, wherein the taxes are to be apportioned between two or more counties, and the board of county commissioners shall proceed, on receipt of such information, to distribute said migratory stock fund, in proportion to the time said stock has been in each of such counties, as above provided, and order warrants drawn in favor of the counties entitled to receive a portion of the said taxes against such migratory stock fund, and the portion remaining, belonging to the home county, shall be distributed on the order of the board of county commissioners to the proper fund, according to the tax levy made during the year such assessment was levied, and the board shall make a like distribution of all moneys received from other counties under the provisions of this act."

Section 108. Section 84-5214, R.C.M. 1947, is amended to read as follows:

"84-5214. **Levy for bounty moneys—use of proceeds.** The *department of revenue* shall, annually prescribe, make and levy an

ad valorem tax on all livestock in the state of Montana for the purpose of protecting such livestock by all means of effective predatory animal destruction, extermination and control, including systematic hunting, trapping in planned campaigns, or otherwise, and payment of bounties, against destruction, depredation and injury by wild animals, whether on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. The tax levy shall not exceed in any one (1) year (a) one and one-half (1½) mills on the assessed valuation of all sheep, and (b) one (1) mill on the assessed valuation of other livestock. The moneys received from such tax levies shall be transmitted monthly with other taxes for state purposes, by the county treasurer of each county, to the state treasury, and be by the state treasurer placed in and to the credit of the earmarked revenue fund (with other moneys in that fund under the provisions of section 46-1901) and such moneys shall thereafter be paid out only on claims duly and regularly presented to the Montana livestock commission, and thereafter approved by said commission, in accordance with the law applicable either to claims for bounties, when such claims are approved, or to claims for other expenditures necessary and proper for predatory animal control by other means and methods than payment of bounties, as may be determined by the Montana livestock commission. All such moneys shall be available for the payment of bounty claims and for expenditures in and for planned, seasonal, or other campaigns directed, or operated by the commission in cooperation with other agencies, for the systematic destruction, extermination and control of predatory wild animals, as may be determined by the commission and the advisory committee thereto. No claims shall be approved in excess of moneys available for such purposes, and no warrants shall be registered against such moneys."

Section 109. Section 84-5403, R.C.M. 1947, is amended to read as follows:

"84-5403. **Net proceeds—how computed.** The state *department of revenue* shall calculate and compute from said returns the gross product yielded from such mine, and its gross value in dollars and cents for the year covered by the statement, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person, corporation or association so engaged in mining which said net proceeds shall be ascertained and determined by substracting from the value in dollars and cents of the gross product thereof the following, to wit:

1. All royalty paid or apportioned in cash or in kind by the person, corporation or association so engaged in mining.

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2. All moneys expended for necessary labor, machinery and supplies needed and used in the mining operations and developments.

3. All moneys expended for improvements, repairs and betterments necessary in and about the working of the mine, except as hereinafter provided.

4. All moneys expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine.

5. Depreciation in the sum of six per cent (6%) of the assessed valuation of such milling and reduction works for the calendar year for which such return is made.

6. All moneys actually expended for transporting the ores, and mineral products or deposits from the mines to the mill or reduction works or to the place of sale, and for extracting the metals and minerals therefrom, and for marketing the product and the conversion of the same into money.

7. All moneys expended for fire insurance and workmen's compensation insurance, and for payments by mine operators to welfare and retirement funds when provided for in wage contracts between mine operators and employees.

In computing the deductions allowable for repairs, improvements and betterments to the mine, the state *department of revenue* shall compute and allow ten per cent (10%) of such cost each year for a period of ten (10) years.

No moneys invested in mines or improvements shall be allowed as a deduction unless all machinery, equipment and buildings represented by such moneys shall be returned to the county in which such mine is located for assessment purposes, at the level of assessment of all other property in such county.

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, and except as hereinbefore provided in this section, shall be included in such expenditures; and such expenditures shall not include the salaries or any portion thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof."

Section 110. Section 84-5606.23, R.C.M. 1947, is amended to read as follows:

"84-5606.23. **Investigations, inquiries and hearings authorized—testimony under oath—subpoena powers—finding and order to be made and filed.** The *department* and its duly authorized agents are empowered to conduct investigations, inquiries, and hearings

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hereunder, and any member thereof, or any agent, is authorized to administer oaths and take testimony under oath, relative to the matter of inquiry or investigation. The *director,* or *his* authorized agent, may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. The *director,* or *his* agent, after the hearing, shall make findings and an order, in writing, which findings and order shall be filed in the office of the *department* and open for public inspection."

Section 111. Section 84-5606.24, R.C.M. 1947, is amended to read as follows:

"84-5606.24. **Hearing or rehearing before** *state tax appeal board.* Any person aggrieved by any action of the *department* or its duly authorized agents, under the provisions of this act, may apply to the *state tax appeal board,* in writing, for a hearing or rehearing thereon within thirty (30) days after such action of the *department* or its authorized agents. The *board* shall promptly consider such application, set same for hearing and notify the applicant of the time and place fixed for such hearing or rehearing, which may be at its office or in the county of the applicant. After such hearing or rehearing, the *board* may make any further or other order in the premises, as it may deem proper and lawful and shall furnish a copy thereof to the applicant. The *department,* on its own initiative, may order a hearing on any matter concerned with the administration of this act, upon at least ten (10) days notice in writing to the person or persons to be investigated."

Section 112. Section 84-5606.26, R.C.M. 1947, is amended to read as follows:

"84-5606.26. *Department's* **duties and powers—arrest, entry of complaint and lawful search and seizure authorized.** The *department* is charged with the duty of administering and enforcing the provisions of this act, and the *director and his agents,* are hereby given the powers of peace officers, and are authorized and empowered to arrest any person violating any provision of this act, and to enter complaint before any court of competent jurisdiction, and to lawfully search and seize and use as evidence, any unlawful or unlawfully possessed license, stamp or insignia found in the possession of any person or place."

Section 113. Section 84-5801, R.C.M. 1947, is amended to read as follows:

"84-5801. **Production credit associations—assessment and payment.** Every production credit association organized under the provisions of section 1131d of title 12, United States Codes annotated shall be assessed for and pay taxes upon all real and personal

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property owned by such association, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained by deducting from the amount of loans, including loans secured by mortgage on real estate or personal property, the amount of such loans discounted, and any indebtedness representing money borrowed for use as moneyed capital. Said moneyed capital shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith.

The secretary or managing agent of every such association shall furnish to the assessor of the county in which the principal office of such association is located, within five (5) days after demand therefor, a statement in such detail as the *department of revenue or its agent* may require, verified by his oath of the resources and liabilities of such association as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year. If such secretary or managing agent shall fail to make the statement hereby required, the *department of revenue or its agent* shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such association. The *department of revenue or its agent* shall thereupon make an assessment of the real estate and personal property owned by such association, and of the moneyed capital employed in the business of such association which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such association to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly."

Section 114. Section 84-6012, R.C.M. 1947, is amended to read as follows:

"84-6012. **Livestock brought into state—notice to** *department of revenue or its agent.* The owner or the agent, manager or foreman of any person, corporation, or association bringing livestock into this state after the first Monday in March shall immediately after said livestock crosses the state line, forward to the *department of revenue or its agent in* the county into which the livestock is moved, a registered letter, which letter shall *contain* the name of the owner of such livestock, of the number thereof, the brand thereon, and the ages of the same, together with the time and place at which said livestock was brought across the state line, provided, that the Montana livestock sanitary board at least once each month furnish, from its own records to the *department of*

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revenue or its agent in the county into which such livestock is moved, a list of the number and kind of livestock so moved, together with the name of the owner thereof."

Section 115. Section 84-6013, R.C.M. 1947, is amended to read as follows:

"84-6013. **Collection of tax on livestock.** The *department of revenue or its agent* upon receipt of such letter or other information, that livestock has been brought into his county from outside of the state, after the first Monday in March in any year, shall immediately proceed under the provisions of section 84-4201."

Section 116. Section 84-6014, R.C.M. 1947, is amended to read as follows:

"84-6014. **Intention to move livestock from one county to another—notice—proration of tax.** If any owner of livestock driven into the state as hereinbefore provided intends to move said livestock from the county of entry to another county of this state for grazing purposes, he shall file with the *department of revenue or its agent* in the initial county a notice to that effect, giving the number and kind of livestock and the brand thereon, and the time he intends to graze such livestock in the second county, and the *department or its agent* shall prorate the tax on such livestock in conformity with the provisions of sections 84-5202 to 84-5208, inclusive."

Section 117. Section 84-6202, R.C.M. 1947, is amended to read as follows:

"84-6202. **Statement of yield, penalty, extension of time.** Every person engaged in mining upon any mine whatsoever containing natural gas, petroleum, or other crude or mineral oil must on or before the thirty-first day of March in each year make out and deliver to the state *department of revenue* a statement of the gross yield of such natural gas, petroleum, or other crude or mineral oil from each mine owned or worked by such person during the next preceding calendar year, and the value thereof. Such statement shall be in the form prescribed by the state *department of revenue* and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership. Such statement shall show the following:

1. The name and address of the operator of the mine, together with a list in duplicate of the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof,

and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement.

2. The description and location of the mine.

3. The number of cubic feet of natural gas, barrels of petroleum, or other crude or mineral oil extracted or produced from the mine during the period covered by the statement.

4. The gross yield or value in dollars and cents.

5. Actual cost of extracting same from mine.

6. Cost of construction, repairs and betterments of mines.

7. Actual cost of fire insurance and workmen's compensation insurance.

If any person shall fail, neglect or refuse to file the statement required by this section within the time required, or within any extended period of time allowed, the state *department of revenue* when transmitting the net proceeds valuations to the counties shall inform the county assessor of such failure, neglect or refusal and the county assessor in addition to the net proceeds tax, if any, shall assess a penalty of ⅔ of 1% of such tax for each calendar month or fraction thereof that the required statement is not filed, deducting therefrom any moneys collected by the state *department of revenue* required by this section. The state *department of revenue* shall assess a penalty of $25 for each calendar month or fraction thereof, not exceeding four months, that the required statement is not filed, to be collected by the state *department of revenue* and deposited to the credit of the general fund of the state of Montana.

The state *department of revenue* shall upon a showing of reasonable cause, grant an extension of time for filing the statement required by this section.

This penalty shall be in addition to penalties provided in section 84-6209."

Section 118. Section 84-6702, R.C.M. 1947, is amended to read as follows:

"84-6702. **Montana compact commissioner**—*director of revenue.* The *director* of the state *department of revenue* shall represent this state on the multistate tax commission."

Section 119. Section 84-6703, R.C.M. 1947, is amended to read as follows:

"84-6703. **Alternate.** The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by him."

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Section 120. Sections 84-211, 84-429.10, 84-443, 84-444, 84-445, 84-446, 84-447, 84-453, 84-502, 84-503, 84-4732, 84-4733, 84-4734, and 84-4735, R.C.M. 1947, are repealed.

Approved: March 21, 1973.

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Section 3. Section 16-402, R.C.M. 1947, is amended to read as follows:

"16-402. **Designation of temporary county seat—special election.** (1) Immediately after the organization of the board of county commissioners, as provided in the preceding section, said board shall, by a resolution spread upon the minutes of its proceedings, designate some place within said county as and to be the temporary county seat until the permanent county seat shall be located as hereinafter in this act provided. The place so designated shall be the temporary county seat of said county until the permanent county seat is located by the electors of said county at the general election to be held on the first Tuesday after the first Monday of November of the next even-numbered year after the creation of the county, or at a special election as hereinafter provided.

(2) In the event of a majority of the county commissioners failing to agree upon the location of the temporary county seat, then each county commissioner shall write the name of the place he favors as the temporary county seat on a slip of paper and said slips be enclosed in envelopes of the same size, color, and texture, and shall be deposited in a box or other suitable receptacle, and the county clerk, in the presence of said commissioners, shall draw out one of the said slips. Thereupon the county commissioners shall, by resolution spread upon the minutes, declare the place named on the slip so drawn by the county clerk to be the temporary county seat of said county.

(3) At said first general election after the creation of the county, it shall be the duty of the board of county commissioners and county clerk to have separate official ballots printed and distributed for the use of the electors at said election; which ballots shall be in the form and contain the same matter as the ballots provided for in section 16-408 of this code, and the provisions of section 16-409 of this code shall apply to and govern the manner of voting and of canvassing said ballots, and the board of county commissioners shall declare the result of such election and the location of the permanent county seat, and said county seat shall be located in the manner and according to the provisions of said section 16-409.

(4) Provided, however, that at any time within six months after the passage of an act creating a new county, a petition or petitions may be filed with the county clerk of the board of county

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commissioners of such county asking the board to submit the question of the location of the permanent county seat to the electors of the county at a special election to be called and held in the manner hereinafter in this act provided. Said petition or petitions must contain in the aggregate the names of at least one hundred *qualified electors* whose names also appear as registered electors in some registration district established and existing in the territory embraced in the new county at the last general election held therein.

(5) The petition or petitions when filed with the board must also have certificates attached thereto from the county clerk of the county in which the person or persons signing the petition resided before the creation of the new county, certifying that the names of the persons signing said petition or petitions appear in the registration books of his county containing the names of the electors registered in the last general election in the districts now embraced in the new county."

Section 4. Section 16-405, R.C.M. 1947, is amended to read as follows:

"16-405. **Registration of voters.** The period for the registration of electors shall be between the hours of nine a.m. and nine p.m. on all legal days from nine a.m. of the fourth Monday prior to the date of said election to nine p.m. of the second following Saturday. It shall be the duty of each registry agent to publish and post notices of the time and places of registration in the manner provided by law for the publication of notices of registration for general elections. No person shall be entitled to register and vote at such special election unless he is a qualified voter of the state of Montana of the minimum age provided by the constitution of the state of Montana.

The general election laws of this state governing the registration of electors and defining the duties of the registry agents shall apply to and govern the registration of electors in elections held under this act in so far as the same do not conflict herewith."

Section 5. Section 16-412, R.C.M. 1947, is amended to read as follows:

"16-412. **Submission of question of locating permanent county seat to voters—elections.** Any county heretofore created, in which the permanent county seat has not been located by valid election held for the purpose of locating the permanent county seat of said county, may have a special election, for the purpose of voting on such question, called and held under the provisions of this act, or if no special election is held for such purpose, then said question

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shall be submitted by the county commissioners at the next general election after the passage of this act and in the manner provided herein for the submission of such questions at general elections; provided, however, that no special election shall be called for the purpose of submitting such question unless a petition or petitions containing in the aggregate the names of one hundred electors of such county, whose names appear on the last registration books of said county, are filed with the clerk of the board of county commissioners within six months after the passage and approval of this act.

Upon the filing of such petition or petitions within said time, containing the requisite number of electors, which must be ascertained by the board from the records of said county, said board must immediately call such special election as herein provided.

If registration districts and polling precincts have already been established in said county, they shall remain the same for such special election, but a new registration shall be had and said special election conducted and the result determined as in this act provided.

The provisions of this section shall not apply in any case where there has been a permanent county seat located and maintained for a period of three years from the date immediately subsequent to the date of the approval of this act, whether the same was located by a legal election or otherwise."

Section 6. Section 16-501, R.C.M. 1947, is amended to read as follows:

"16-501. **Creation of new counties—debts and assets prorated—minimum area and valuation.** New counties may from time to time be formed and created in this state from portions of one or more counties, which shall have been created and in existence for a period of more than two years, in the manner set forth and provided in this act; provided, however, that no new county shall be established which shall reduce any county to an assessed valuation of less than twelve million dollars ($12,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment; nor shall any new county be established which shall reduce the area of any existing county from which territory is taken to form such new county, to less than twelve hundred square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties nor shall any new county be formed which contains an assessed valuation of property less than ten million dollars ($10,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment, of the county or counties from which such new county is to be established, nor

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shall any new county be formed which contains less than one thousand square miles of surveyed land exclusive of all forest reserve land or Indian reservations, not open for settlement, nor shall any line thereof pass within fifteen miles of the courthouse situate at the county seat of the county sought to be divided; provided, that such county line may be run within a distance of ten miles of a county seat in cases where the natural contour of the county, by reason of mountain ranges or other topographical conditions, is such as to make it difficult to reach the county seat, and in such cases a petition, signed by at least *fifty* per centum *(50%)*, of the voters in the proposed new county, shall be presented to the judge of the district court in which the county affected is located, asking for the appointment of a commission of five (5) disinterested person, who shall determine if the topographical conditions are such as to warrant the fixing of the county division lines closer than at fifteen miles from the county seat, as such boundaries are legally fixed and determined at the date of the filing of the petition or petitions referred to in section 16-504 of this code.

Every county which shall be enlarged or created from the territory taken from any other county or counties shall be liable for a prorata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken, and shall be entitled to a prorata proportion of the assets of the county or counties from which such territory is taken, to be determined as provided by sections 16-502, 16-503 and 16-511."

Section 7. Section 16-504, R.C.M. 1947, is amended to read as follows:

"16-504. **Petition for creation of new county—attached affidavits—notice and hearing.** (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of such then existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties; and such board of county commissioners shall be empowered and have jurisdiction to do and perform all acts provided for to be done or performed in this act, for each of the several counties from which any proposed territory is to be taken, and shall direct that a certified copy of all orders and proceedings had before such board of county commissioners shall be certified by the county clerk to

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the board of county commissioners of each of the several counties from which any territory is taken by the proposed new county; and all officers of any such county shall comply with the orders of the board of county commissioners, in the same manner as if said order had been duly made by the board of county commissioners of each respective county from which territory is proposed to be taken. Such petition shall be signed by at least *fifty* per cent *(50%)* of the qualified electors of the proposed new county, whose names appear on the official registration books and who are shown thereon to have voted at the last general election preceding the presentation of said petition to the board of county commissioners as herein provided; provided, that in cases where the proposed new county is to be formed from portions of two or more counties, separate petition shall be presented from the territory taken from each county; and each of said separate petitions shall be signed by at least *fifty* per cent *(50%)* of the qualified electors of each of said proposed portions. Such signatures need not all be appended to one paper, but may be signed to several petitions which must be similar in form, and when so signed the several petitions may be fastened together and shall be treated and presented as one petition.

(2) Such petition or petitions shall contain:

1. A particular description of the boundaries of the proposed new county.

2. A statement that no line thereof passes within fifteen miles of the courthouse situated at the county seat of any county proposed to be divided, except as hereinafter in this act provided.

3. A statement of the assessed valuation of such proposed county as shown by the last preceding assessment, inclusive of all assessed valuation.

4. A statement of the surveyed area in square miles which will remain in the county or counties from which territory is taken to form such new county, after such county is formed, and a statement of the surveyed area in square miles which will be in the new county after formed.

5. The name of the proposed new county.

6. A prayer that such proposed new county be organized into a new county under the provisions of this act.

There shall be attached and filed with said petition or petitions an affidavit of five qualified electors residing within each county sought to be divided, to the effect that they have read said petition and examined the signatures affixed thereto, and

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they believe that the statements therein are true, and that it is signed by at least *fifty* per cent *(50%)* of the qualified electors as herein provided, of the proposed new county, or of the proposed portion thereof, taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties; that the signatures affixed thereto are genuine; and that each of such persons so signing was a qualified elector of such county therein sought to be divided, at the date of such signing. Such petition or petitions so verified, and the verification thereof, shall be accepted in all proceedings permitted or provided for in this act, as prima facie evidence of the truth of the matters and facts therein set forth. Upon the filing of such petition or petitions and affidavits with the clerk of the said board of county commissioners, said clerk shall forthwith fix a date to hear the proof of the said petitions and of any opponents thereto, which date must be not later than thirty days after the filing of such petition with the clerk of said board. The county clerk shall also, at the same time, designate a newspaper of general circulation published in the old counties, but not within the proposed new county, and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which the said county clerk shall order and cause to be published, at least once a week for two weeks next preceding the date fixed for such hearing, a notice in substantially the following form:

Notice

Notice is hereby given that a petition has been presented to the board of county commissioners of ..... county (naming the county represented by the board of county commissioners with which said petition was filed), praying for the formation of a new county out of portion of the said ..... county and ..... county (naming the county or counties of which it is proposed to form the new county), and that said petition will be heard by the said board of county commissioners at its place of meeting (designating the city or town and the day and hour of the meeting so to be held), and when and where all persons interested may appear and oppose the granting of said petition, and make any objections thereto.

Dated at ..... at ..... Montana.

....., County Clerk.

Said petitioners shall, on or before the date fixed for said hearing, file with the said board of county commissioners a bond to be approved by said board, in an amount of five thousand dollars, payable to the county in which said petition is filed,

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conditioned that the obligors named in said bond will pay to said county all expenses incurred in the election provided for in this act, not exceeding the amount specified in said bond, in the event that at the election herein provided for more than *fifty* per cent *(50%)* of the votes cast at said election are "for the new county of ..... (naming the proposed new county)," "No."

(3) At the time so fixed for said hearing, the board of county commissioners shall proceed to hear the petitioners and any opponents and protestants upon the petition or protests filed on or before the time fixed for the hearing. No petition or protest or petition for the exclusion of territory shall be considered unless the same is filed at least one day before the time fixed for the hearing, and such petition for the exclusion of territory shall contain the names of not less than fifty per cent of the qualified electors who are resident property taxpayers of any territory to be excluded. All such territory being excluded must be in one block, and contain an area of not less than thirty-six square miles, and be totally within one county, and contiguous thereto, and the board of county commissioners may adjourn such hearing from time to time, but not for more than ten days after the time fixed for the hearing, and shall receive the proof to establish or controvert the facts set forth in said petition. No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signature from the petition for the exclusion of territory shall be received or considered which are not filed within five days after the filing of the petition for such exclusion of territory.

(4) The board of county commissioners, on the final hearing of such petition or petitions, shall, by a resolution entered on its minutes, determine:

1. The boundaries of the proposed new county, and the boundaries so determined by said board of county commissioners shall be the boundaries of such proposed new county, if it be created as herein provided.

2. Whether the said petition contains the genuine signatures of at least *fifty* per cent *(50%)* of the qualified electors of the proposed new county as herein required, or in cases where separate petitions are presented from portions of two or more existing counties as herein required, whether each petition is signed by at least *fifty* per cent *(50%)* of the qualified electors of that portion of each of such existing counties which it is proposed to take into the proposed new county.

3. Whether any line of the proposed new county passes

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within fifteen miles of the courthouse situate at the county seat of any county proposed to be divided, except as hereinbefore provided.

4. Whether the proposed new county will contain property, according to the last preceding assessment, which will equal in amount at least four million dollars, inclusive of all assessed valuation.

5. Whether the area of any existing county from which territory is taken to form such new county will be reduced to less than twelve hundred square miles of surveyed land, by taking the territory proposed to be taken therefrom to form such new county.

6. Whether the area of the proposed new county will contain at least one thousand square miles of surveyed land to form such new county.

7. The class to which said proposed new county after its creation will belong, and the name of said proposed new county, as stated in such petition.

8. Whether the area embraced within the proposed new county will be reasonably compact.

(5) On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors (as shown by the official registration books on the day of the filing of any such petition) of any territory lying within said proposed new county contiguous to the boundary line of the said proposed new county, and of the old county from which such territory is proposed to be taken, and lying entirely within a single old county and described in said petition, asking that said territory be not included within the proposed new county, must make such changes in the proposed boundaries as will exclude such territory from such new county, and shall establish and define such boundaries. On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors of any territory lying outside said proposed new county, and contiguous to the boundary line of said proposed new county, and of the old county or counties from which such territory is proposed to be included, asking that said territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in such new county, and shall establish and define such boundaries; provided, however, that the segregation of such territory from any old county or counties shall not leave such county or counties with less than twelve million dollars of assessed valuation, based upon the last

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assessment roll; provided, that no change or changes so made shall result in reducing the valuation of the proposed new county to less than an assessed valuation of ten million dollars, inclusive of all assessed valuation; and provided, further, that no change shall be made which shall leave the territory so excluded separate and apart from and without the county of which it was formerly a part. Petitions for exclusion shall be disposed of in the order in point of time in which they are filed with the clerk of the board of county commissioners, and on final determination of boundaries no changes in the boundaries originally proposed shall be made except as prayed for in said petition or petitions, or to correct clerical errors or uncertainties."

Section 8. Section 16-505, R.C.M. 1947, is amended to read as follows:

"16-505. **Duty of commissioners when findings justify new county—division into township, road and school districts—change of boundaries of election precincts—election—temporary county seat.** (1) If the said board of county commissioners determine that the formation of said proposed new county will not reduce any county from which any territory is taken to an assessed valuation of less than twelve million dollars, inclusive of the assessed valuation, nor the area thereof to less than twelve hundred square miles of surveyed land, and that the proposed new county contains property of an assessed valuation of at least ten million dollars, inclusive of all assessed valuation, and that the proposed new county has an area of at least one thousand square miles of land, and that no line of said proposed new county passes within fifteen miles of the courthouse situate at the county seat of any county proposed to be divided, except as hereinbefore provided, and that said petition contains the genuine signatures of at least *fifty* per cent *(50%)* of the qualified electors of the proposed new county, or in cases where separate petitions are presented from portions of two or more existing counties (as herein required), that each of said petitions contain the genuine signatures of at least *fifty* per cent *(50%)* of the qualified electors of that portion of the proposed new county from which it is taken, then the said board of county commissioners shall divide the proposed new county into a convenient number of township, road, and school districts, and define their boundaries and designate the names of such districts.

(2) Said board of county commissioners shall also, if necessary for the purpose of the election hereinafter provided for, change the boundaries of the election precincts in said old county or counties to make the name conform to the boundaries of the proposed new county; provided, that the boundary lines of no

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such precinct shall extend beyond the boundary lines of the then existing county in which it is located, and from which the territory is proposed to be taken; and said board shall appoint election officers to act at said election and to be paid by said board.

(3) Within two weeks after its determination of the truth of the allegations of said petition as aforesaid, the said board of county commissioners shall order and give proclamation and notice of an election to be held on a specified day in the territory which is proposed to be taken for the new county, not less than ninety days nor more than one hundred and twenty days thereafter, for the purpose of determining whether such territory shall be established and organized into a new county; and for the election of officers and location of a county seat therefor, in case the vote at such election shall be in favor of the establishment and organization of such new county. All qualified electors residing within the proposed new county who are qualified electors of the county or counties from which territory is taken to form such proposed new county, and who are registered under the provisions of the registration laws of the state, shall be entitled to vote at said election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in the state of Montana.

(4) Such proclamation and notice of election shall be published at least once a week for three weeks before the holding of such election, in some newspaper of general circulation published in the territory which is proposed to be taken for the new county, and a copy thereof shall be mailed immediately by the county clerk of the county in which the petition is filed to the county clerk of each county from which territory is taken for the proposed new county. Such proclamation and notice shall require the voters to cast ballots which shall contain the words, "For the new county of ..... (giving the name of the proposed new county)" "Yes," and "For the new county of .... (giving the name of the proposed new county)," "No," and each voter desiring to vote for the establishment and organization of said new county shall mark a cross (x) opposite the words, "For the new county of .....," "Yes," in the manner now required by law in other elections, and each voter desiring to vote against the establishment and organization of said new county shall mark a cross (x) opposite the words, "For the new county of .....," "No," in the manner now required by law in other elections; and shall also contain the names of persons to be voted for to fill the various elective offices designated in said proclamation for counties of the class to which

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said proposed county will belong, as determined by the board of county commissioners as herein otherwise provided.

(5) There shall also be printed upon said ballot the words, "For the county seat," and the names of all cities or towns which may have filed with the county clerk a petition signed by at least twenty-five qualified electors, nominating any city or town within the proposed new county for the county seat, and the voter shall designate his choice for county seat by marking a cross (x) opposite the name of the city or town for which he desires to cast his ballot. At the special election to be held, as provided in this act, the question of the election of the county seat is hereby provided to be submitted to the qualified electors of the proposed new county, and the majority of all the votes cast therefor shall determine the election thereon. In case any city or town fails to receive a majority of all the votes cast, then the city or town receiving the highest number of all votes cast shall be designated as the temporary county seat, and in case any city or town is not the choice of the election for the county seat by a majority of all the votes cast, the question of choice between the two cities or towns for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors at the next general election thereafter. When the county seat shall have been selected as herein provided, it shall not thereafter be changed except in the manner provided by law.

(6) The proclamation calling the election and the notice thereof provided for in this act shall be made and given exclusively by the board of county commissioners with which is filed the said petition for the formation and establishment of such new county, and such board shall cause the clerk of said county to furnish to the officers of each precinct in such proposed new county all ballots, poll list, tally lists, registers for voters' signatures, ballot boxes, and other election supplies and equipment necessary to conduct such election, and which are not hereinafter specifically directed to be furnished by the clerk of another county or counties. Such election shall be governed and controlled by the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided. The returns of all elections for the creation of the county, and for officers and for location of the county seat as provided for in this act, shall be made to and canvassed by the board of county commissioners of the county from which the largest area is taken by the proposed county.

(7) The county clerk of each county from which territory is taken for the proposed new county shall, not less than five days before the date of such election, furnish to each board of election within said proposed new county, a copy of the official register

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for the precincts of such proposed new county as are within their respective counties, and the copies of indexes thereof required by law containing the names of all persons who were qualified electors at the last general election before the date of such election.

All returns of election herein provided for shall be made to the board of county commissioners calling such election.

All nominations of candidates for the office required to be filled at said election shall be made in the manner provided by law for the nomination of candidates by petition.

The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of said laws relating to primary elections in this state, shall have application to any election provided for in this act."

Section 9. Section 16-506, R.C.M. 1947, is amended to read as follows:

"16-506. **Measures to be taken after election—officers—effect of adverse vote.** (1) If, upon the canvass of the votes cast at such election, it appears that *more than fifty* per cent *(50%)* of the votes cast are "For the new county of .....," "Yes," the board of county commissioners shall, by a resolution entered upon its minutes, declare such territory duly formed and created as a county of this state, of the class to which the same shall belong, under the name of ..... county, and that the city or town receiving the highest number of votes cast at said election for county seat shall be the county seat of said county until removed in the manner provided by law, and designating and declaring the person receiving respectively the highest number of votes for the several offices to be filled at said election, to be duly elected to such offices. Said board shall forthwith cause a copy of its said resolution, duly certified, to be filed in the office of the secretary of state, and ninety days from and after the date of such filing said new county shall be deemed to be fully created, and the organization thereof shall be deemed completed, and such officers shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state. The clerk of the board of county commissioners with which said petition was filed, as herein provided, must immediately make out and deliver to each of said persons so declared and designated to be elected, a certificate of election authenticated by his signature and the seal of said county. The persons elected members of the board of county commissioners and the county clerk shall immediately,

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upon receiving their certificates of election, assume the duties of their respective offices.

(2) The board of county commissioners shall have authority to provide a suitable place for the county officers, and to purchase such supplies as may be deemed necessary for the proper conduct of the county government. All other officers take office ninety days after the filing of the resolution herein provided for with the secretary of state. All the officers elected at said election, or appointed under this act, shall hold their offices until the time provided by general law for the election and qualification of such officers in this state, and until their successors are elected and qualified, and for the purpose of determining the term of office of such officers, the years said officers are to hold office are to be computed respectively from and including the first Monday after the first day of January following the last preceding general election. If, however, upon such canvass it appears that more than *fifty* per cent *(50%)* of the votes cast at said election are "For the new county of .....," "No," the board of county commissioners canvassing said vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease; and no other proceedings in relation to any other division of said old county or counties shall be instituted for at least two years after such determination."

Approved: March 21, 1973.

CHAPTER NO. 407

An Act to Amend Section 10-501, R.C.M. 1947, to Change the Definition of a Dependent or Neglected Child to Include Children Up to and Including the Age of Seventeen (17) Years.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 10-501, R.C.M. 1947, is amended to read as follows:

"10-501. **Dependent and neglected children—definition.** For the purpose of this act, the words "dependent child" or "neglected child" shall mean any child of the age of *seventeen (17)* years, or under that age, who is dependent upon the public for support, and who is destitute, homeless, or dependent, or who has no proper parental care or guardianship, or who habitually begs or receives alms, or who is found living in any house of ill-fame, or in any

house of prostitution, or whose home, by reason of neglect, cruelty, or depravity on the part of its parents, guardian, or other person in whose care it may be, is an unfit place for such child, or whose environment is such as to warrant the state, in the interest of the child, to assume its guardianship or support."

Approved: March 21, 1973.

CHAPTER NO. 408

An Act Amending Section 26-202.1 and Section 26-202.6, R.C.M. 1947, Relating to Fees for Resident and Nonresident Fishing Licenses; Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 26-202.1, R.C.M. 1947, is amended to read as follows:

"26-202.1. **Licenses—fees—classifications of licenses—fees and powers under licenses.** (1) Class A license — Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of *five* dollars *($5)* shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 license—Resident Game Bird License. Except as herein provided, any resident as defined by section 26-202.3, who is twelve (12) years of age or older, may, upon payment of a fee of two dollars ($2) receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the commission.

(a) No hunting licenses shall be issed to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

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(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any of the following: a Class A-3, A-4, A-5, B-2, B-5 or B-6 license, may upon payment of an additional sum of three dollars ($3) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, three dollars ($3); Class A-4, Deer B Tag, five dollars ($5); Class A-5 Elk Tag, three dollars ($3); Class A-6, Black or Brown Bear Tag, five dollars ($5); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

(5) Class B License—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of *twenty* dollars *($20)* to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

(7) Class B-2 License—Nonresident Big Game License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of one hundred twenty-five dollars ($125) for the license year from May 1, 1967 to April 30, 1968 and thereafter for subsequent license years upon payment of the sum of one hundred fifty dollars ($150) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class

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B-2 license which shall authorize the holder to pursue, hunt, shoot, and kill game animals in the area or areas designated in the license, as determined by the commission, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of *ten dollars ($10)* to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days inclusive of the dates indicated on the license.

(9) Class B-5 License—Nonresident Deer License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-5 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) deer in the area or areas designated in the license, as determined by the commission, and to possess the carcass of same.

(10) Class B-6 License—Nonresident Antelope License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) antelope in the area designated in the license, as determined by the commission, and to possess the carcass of same.

(11) Special Licenses. Any applicant who is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Mountain Goat, resident fifteen dollars ($15), nonresident thirty dollars ($30);

Mountain Sheep, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Bison or Buffalo, resident twenty-five dollars ($25), nonresident one hundred dollars ($100);

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Antelope, resident three dollars ($3), nonresident ten dollars ($10);

Grizzly Bear, resident five dollars ($5), nonresident grizzly, black or brown bear, thirty-five dollars ($35).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars ($25) within ten (10) days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid applications for special licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.

(12) Class C License—Trapper's License. Any resident as defined in section 26-202.3, upon making application and paying the sum of ten dollars ($10) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap fur-bearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(13) Class C-1 License—Landowner's Trapping License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1) shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(14) Exception. (a) A resident under the definition of section 26-202.3, who is *sixty-five (65)* years or older shall be entitled to fish and hunt game birds with a pioneer license issued by the state fish and game commission for a fee of fifteen cents ($.15). The form of such license shall be prescribed by the fish and game commission.

(b) Residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such

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residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) A veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, may fish with a license issued by the head of the hospital on forms prescribed and furnished by the commission. The fee for such license shall be fifteen cents ($.15).

(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(e) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, A-4, and A-5 licenses for one-half (½) of the fees prescribed in this section.

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6 licenses to be issued in each of the hunting districts designated by it.

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(15) Only one (1) license of any one (1) class, except Class B-3 and B-4 licenses, shall be issued to any one (1) person, provided, however, that the commission may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen or destroyed upon payment of the sum of one dollar ($1).

(16) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who is twelve (12) years of age or older, upon payment of the sum of twenty dollars ($20) shall be entitled to a sportman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5 and A-6 licenses. The commission shall furnish each holder of a sportsman's license an appropriate decal."

Section 2. Section 26-202.6, R.C.M. 1947, is amended to read as follows:

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"26-202.6. **Nonresident one (1) day fishing license (Class** B-4). Any person not a resident as defined in section 26-202.3, R.C.M. 1947, who is a holder of a valid wildlife conservation license, upon payment of the sum of *two dollars ($2)* to any agent of the state fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a one (1) day nonresident fishing license, which shall authorize the holder to fish with hook and line as prescribed by rules and regulations of the commission for one (1) calendar day as indicated on the license."

Section 3. One dollar ($1) of the fee for Class A resident fishing license; one dollar ($1) of the fee for Class B-4 nonresident one (1) day fishing license, *five dollars ($5) of the fee for the Class B-3 nonresident six (6) day fishing license;* and five dollars ($5) of the fee for the Class B nonresident fishing license shall be used for the purchase of fishing accesses, stream, river and lake frontages and the land deemed necessary to provide recreational use thereof. *The funds raised under this section are not to supplement any funds or sources of funds currently being used for acquisition or purchase of fishing accesses, stream, river or lake frontages and the land deemed necessary to provide recreational use thereof, but serve in addition to those funds.*

Section 4. This act shall be in effect for license year beginning April 30, 1974, and thereafter for subsequent license years.

Approved: March 21, 1973.

CHAPTER NO. 409

An Act to Amend the Statutes Relating to the Creation and Operation of Drainage Districts in the State of Montana, and Their Adaptation to Flood Control Projects, as Contained in Sections 89-2201 through 89-2825, R.C.M. 1947, so as to Provide that When Benefits of Such Projects are Received by Improvements to Land, or Facilities or Structures Placed on or in Land, the Benefits so Received May Be Subject to Assessment for District Costs of the Project; Amending Section 89-2330 to Include Improvements, Facilities and Structures as Subject to Assessment and Clarifying the Inclusion of Public Utilities in the Payment of Assessments; Amending Sections 89-2332, 89-2333, 89-2334, 89-2337, 89-2338, 89-2405, and 89-2410, R.C.M. 1947, so as to Include Improvements; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-2330, R.C.M. 1947, is amended to read as follows:

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"89-2330. **Report as to assessments.** Fourth. What lands, *(including improvements when improvements receive benefits)* easements, irrigation ditches, cities, towns, counties, individuals and other corporations and persons should be assessed for the payment of any part of the cost of constructing the proposed drains, *levees or other facilities,* repairs thereto, maintenance thereof and the incidental expenses attached to the establishment of such drainage district. In apportioning such costs and expenses, the following principles shall be regarded and the following classes of property, persons, corporations and municipalities shall be assessed:

All lands which are swampy, bogged or waterlogged, and will be relieved and improved by virtue of the construction of the proposed drainage system;

All lands which are becoming, or are liable to become swampy, bogged, or waterlogged, and which the construction of the proposed drainage system will prevent from being thus affected;

All lands from which surface or seepage waters will enter or can be conducted into the proposed drainage system;

All lands *and improvements thereto* upon which or through which, surface or seepage water will be prevented from flowing, or can be prevented from flowing, by virtue of the construction of the proposed drainage system;

All lands *or improvements* which will sustain any direct benefit of any kind or character whatsoever;

All railways, whether operated by steam, electricity or otherwise, whose right of way or roadbed will be benefited or can be benefited by reason of the construction of the proposed drainage system, *or levee project, and all public utilities whose easements or other facilities within the district will receive benefit from the proposed work;*

All owners of irrigation ditches or canals included within said district or from which water seeps, drains or wastes to, upon or through lands included within the said district;

The county or counties which the proposed drainage system traverses, or which will be benefited as to public health, convenience, welfare or improvement of any public highway;

All incorporated cities or towns, and lands included within townsites and subdivisions, in whole or in part, directly benefited by reason of the construction of the proposed drainage system;

All of the above classes of lands, *improvements,* railways, *public utilities,* irrigation ditches, counties, cities, towns, townsites

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and subdivisions shall be liable to assessment for the construction of the proposed drainage system in such proportions as may seem just and equitable.

The benefits to accrue from the construction of the proposed drainage system, to a railway, county, incorporated city or town, and lands included within a platted townsite or subdivision being of a different character than those to accrue to agricultural lands shall be considered in apportioning the assessment, and also, the damages and inconvenience caused by seepage and waste waters from irrigation ditches and from the higher lands, shall be considered in apportioning the assessment to them.

Provided that in the case of the construction of levees or other flood control facilities, lands and improvements which are located or constructed at an elevation which is greater than the elevation of the design flood level which said levees or other flood control facilities are designed to protect against shall not be assessed for the payment of any part of the cost of constructing the levees or other flood control facilities nor shall such lands or improvements be assessed for the payment of any part of the cost for repairs thereto, maintenance thereof nor the incidental expenses attached to the establishment of such drainage district.

The assessment against each tract, lot, easement, town, city, county, irrigation ditch, railroad, *public utility,* individual or corporation owner thereof which will be benefited by the proposed work or which, in any manner, contributes to the swamped, seeped, bogged or waterlogged condition of any land within said district and the proportionate share of cost of construction of the proposed drainage system, which each of them should bear shall be shown in tabular form, the columns of which shall be headed as follows: Column 1—Owners of property assessed; 2—Description of property assessed; 3—Number of acres assessed; 4—Amount of benefits assessed; 5—Number of acres taken for right of way; 6—Value of property taken; 7—Damages; 8—Assessment for costs; which shall be known as the assessment roll. Where property, persons or corporations, public or private, contribute to the damaged condition of the lands to be reclaimed, it shall not be necessary to assess in such assessment roll the benefits to be derived by or accruing to them.''

Section 2. Section 89-2332, R.C.M. 1947, is amended to read as follows:

"89-2332. **Report as to assessments against lots and corporations.** If the cost of construction of any particular part of the work so proposed to be done should be assessed upon any par-

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ticular tract or tracts, lot or lots of land, *including improvements where the same are benefited,* or upon any corporation or corporations, the commissioners shall so specify, and in their report they shall fix and determine the sums which should be assessed against said tracts, lots, and corporations, and assess such sum against said tracts, lots, and corporations."

Section 3. Section 89-2333, R.C.M. 1947, is amended to read as follows:

"89-2333. **Report as to special benefits to corporations.** And if any *individual, association of individuals or* corporation would, in the judgment of said commissioners, derive special benefits from the whole or any part of such proposed work, the commissioners shall so report and assess those benefits and assess against the *recipient thereof* its proportionate share of the costs of said proposed work. The word "corporation," whenever in this act contained, shall be construed to include:

1. Railroad companies;
2. Other private and quasi-public corporations of all kinds;
3. Towns;
4. Cities;
5. Villages;
6. Other drainage districts; and,
7. Counties."

Section 4. Section 89-2334, R.C.M. 1947, is amended to read as follows:

"89-2334. **Apportionment of costs of construction.** They shall apportion and assess the part of this "cost of construction," not assessed as above, against the several benefited tracts, lots, *(including improvements when the same are benefited)* and easements in said drainage district, in proportion to the benefits which they have assessed against the same, by setting down opposite each tract, lot, or easement the sum which they assess against the same for construction. The assessments which together make up the cost of construction, as above defined, are herein referred to as "assessments for construction." "

Section 5. Section 89-2337, R.C.M. 1947, is amended to read as follows:

"89-2337. **Commissioners to use most fessible plan—alteration by court.** The commissioners shall not be confined to the

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points of commencement, routes, or termini of the drains or ditches, or the number, extent, or size of the same, or the location, plan, or extent of any levee, ditch, or other work, as proposed by the petitioners, but shall locate, design, lay out, and plan the same in such manner as to them shall seem best, to promote the public health or welfare, and to drain, or to protect the lands, *including improvements,* of the parties interested with the least damage and the greatest benefit to all lands affected thereby. And any plan proposed by the commissioners may, on the application of any person interested, on the hearing hereinafter provided for, or on the application of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just."

Section 6. Section 89-2338, R.C.M. 1947, is amended to read as follows:

"89-2338. **Extension or reduction of boundaries—alteration by court.** If the commissioners find that the proposed district, as described in the petition filed, will not embrace all of the lands, *including improvements,* that will be benefited by the proposed work, or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they shall extend or contract the boundaries of the proposed district so as to include or exclude all such lands, *or improvements,* as the case may be; and the boundaries adopted and reported by them may, upon the hearing of their report, as hereinafter provided, upon their application, or that of any person interested, be altered by the court in such manner as shall appear to be just; provided, that the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissable. Said report shall be filed with the clerk of the court."

Section 7. Section 89-2405, R.C.M. 1947, is amended to read as follows:

"89-2405. **Procedure on failure to certify assessments.** When commissioners shall fail to certify to the county treasurer of the proper county any one or more drainage assessments for construction or repair, or additional assessment against any lands *(including improvements where benefited)* in said district, at the proper time, they may certify the same to the county treasurer at any time thereafter, whether in the same or any subsequent year."

Section 8. Section 89-2410, R.C.M. 1947, is amended to read as follows:

"89-2410. **Additional assessments, procedure to levy.** If in the first assessment for construction the commissioners shall have

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reported to the court a smaller sum than is needed to complete the work of construction, or if in any year an additional sum is necessary to pay the lawful indebtedness of said drainage district, further or additional assessments on the land *(including improvements where benefited)* and *corporations* benefited, proportioned on the last assessment of benefits which has been approved by the court, shall be made by the commissioners of said drainage district under the order of the court or presiding judge thereof; provided, however, that the total assessments for original construction and any additional assessments, other than for maintenance, incidental expense, and interest on bonds, shall, in no event, exceed the total assessments of benefits as provided in section 89-2330. Notice of the hearing of the application for such additional assessment shall be published at least once each week for three consecutive weeks in one newspaper published in each county in which said lands, or any part thereof, within said district are situated; which further or additional assessment may be made payable in installments as specified in section 89-2348, and shall be treated and collected in the same manner as the original assessments for construction confirmed by the court in said drainage district."

Section 9. The provisions of this act shall be severable, and if any of its provisions, sections, or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect.

Section 10. It shall require a vote of the persons on the assessment roles in any existing district to make this law applicable to such districts. Such election shall be held in the same manner as prescribed for drainage district elections in title 89, chapter 23.

Section 11. Nothing in this act confers upon districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

Section 12. This act shall be effective on its passage and approval.

Approved: March 21, 1973.

CHAPTER NO. 410

An Act Providing for the Licensing and Regulation of Motor Vehicle Wrecking Facilities; Controlling Junk Vehicles in Nonwrecking Yard Locations; the Establishment of Motor Vehicle Graveyard Facilities, and Related Matters Thereto; Amending

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Sections 32-4515 and 32-4516, R.C.M. 1947, to Permit the Licensing of Junkyards by the Department of Health and Environmental Sciences; and the Establishment of an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Unless the context requires otherwise, in this act:

(1) "Motor vehicle wrecking facility" means a facility buying, selling, or dealing in four (4) or more vehicles per year of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle, or which buys or sells integral second-hand parts or component material thereof, in whole or in part, and deals in second-hand motor vehicle parts. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(2) "Motor vehicle graveyard" means a collection point for junk motor vehicles prior to their disposal.

(3) "Junk vehicle" means either a discarded, ruined, wrecked, or dismantled vehicle, or vehicle substantially changed in form by removal of parts or component materials, and in either case that remains in public view which is not lawfully and validly licensed and remains inoperative or incapable of being driven excluding antique vintage and classic vehicles.

(4) "Person" means any individual, firm, partnership, association, corporation, or any other entity whether organized for profit or not.

(5) "Department" means the department of health and environmental sciences provided for in title 82A, chapter 6.

Section 2. A person may not conduct, maintain, or operate a motor vehicle wrecking facility without a license issued by the department.

(1) Application for the license shall be made on forms furnished by the department.

(2) An annual fee of fifty dollars ($50) shall be paid to the department for the license, or quarterly prorated for new facilities.

(3) A license shall be displayed in a prominent place in the licensed facility.

(4) The license expires on December 31 of the year issued.

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(5) If a motor vehicle wrecking facility ceases to do business, the license shall be surrendered to the department. The license is not transferable.

Section 3. (1) Possession at a single location, of four (4) or more junk vehicles of a type required to be licensed, is prima facie evidence that the possessor is operating a motor vehicle wrecking facility.

(2) A person who owns or possesses at a single location four (4) or more junk vehicles of a type required to be licensed is subject to this act even though he is not operating a motor vehicle wrecking facility.

Section 4. (1) Every motor vehicle wrecking facility shall maintain books or files in which is kept a record and description of every junk vehicle obtained by it, together with the name of the person from whom the vehicle was purchased.

(2) This record shall also contain:

(a) the certificate of title or sheriff's certificate of sale, or a written release from the former owner;

(b) the name of the state where the vehicle was last registered;

(c) the number of the last license plate;

(d) the make of the vehicle;

(e) the motor or identification number or serial number;

(f) the date purchased;

(g) the disposition of motor and chassis.

(3) When a motor vehicle wrecking facility submits a junk vehicle to the disposal program, it shall pay a disposal fee of two dollars ($2) for each vehicle submitted and it shall surrender to the department all records maintained as required in subsections (1) and (2) of this section, and the vehicle is then the property of the state.

Section 5. (1)(a) Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. The property may be acquired by purchase, lease, or otherwise.

(b) As an alternative, the county may contract for the maintenance and operation of a motor vehicle graveyard or graveyards

(c) Two (2) or more counties may join to form a district for the purpose stated in this section. If a district is formed, all

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provisions of this act pertaining to a county also apply to a district formed under this subsection.

(d) When there is an accumulation of at least two hundred (200) junk vehicles in the graveyard, the county shall notify the department for disposal purposes.

(2)(a) A county shall submit to the department for approval a plan for the collection of junk vehicles and the establishment and operation of the motor vehicle graveyard.

(b) Prior to June 15, the county shall submit to the department for approval a proposed budget for the succeeding fiscal year.

(c) Any proposed change in the budget or plan must be approved by the department.

(d) The budget shall be for the amounts required by the county for collection costs and acquisition, maintenance, and operation of the graveyard.

Section 6. (1) The department shall contract for final disposition of junk vehicles accumulated in motor vehicle graveyards and shall provide for crushing and recycling the material from the vehicles.

(2) The department may also contract to dispose of, by crushing and recycling, junk vehicles accumulated in the yard of a motor vehicle wrecking facility. The department may so contract only upon the request of the facility and only if there is an accumulation of at least two hundred (200) vehicles at the facility.

(3) All moneys received from the sale of the junk vehicles or from recycling of the material shall be deposited with the state treasurer to be utilized for the control, collection, and disposal of junk vehicles.

(4) Any individual may dispose of a junk vehicle by delivering the vehicle to a motor vehicle graveyard and by delivering to the department the certificate or evidence of title to the vehicle, or a written release of the vehicle.

Section 7. (1) All motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for the control, collection, and disposal of junk vehicles.

(2) There is assessed a special junk vehicle disposal fee commencing on July 1, 1973, on each new application for a motor vehicle title and on each transfer of motor vehicle title in the amount of four dollars ($4), on passenger cars and trucks under 8001

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pounds GVW, which shall be collected by the county treasurer, and commencing with the year 1974, there shall be assessed an additional special junk vehicle disposal fee in the amount of one dollar ($1) on each passenger car and truck under 8001 pounds GVW registered for licensing. The one dollar ($1) fee shall be collected by the county treasurer. However, the following are exempt from payment of the fees:

(a) vehicles leased or owned by the state or by a county or municipality;

(b) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(c) vehicles displaying dealers' license plates, as provided in section 53-122, while owned by a dealer;

(d) house trailers or equipment which are not self-propelled or which require towing upon a highway of this state.

(3) The department shall report to each legislature the amount collected under this act and the cost of administration of the act to date so that any necessary adjustment of the amount of the fee may be made to assure that no more than the actual cost of operation of the program is collected.

(4) The department shall pay to a county the amount of the approved budget of the county. However, the yearly payment may not exceed one dollar ($1) for each motor vehicle that is licensed in that county.

Section 8. The department shall adopt rules necessary to administer and enforce this act, including, but not limited to, rules pertaining to:

(1) the control, operation, and licensing of motor vehicle wrecking yards;

(2) the control of junk vehicles in locations other than motor vehicle wrecking yards;

(3) the inspection and evaluation of premises and records subject to or required by this act;

(4) the development of budget and fiscal forms and procedures for counties;

(5) the review, approval, and control procedures for county motor vehicle graveyards developed under this act.

Section 9. The department may deny, suspend, or revoke a motor vehicle wrecking facility's license when it proves the business:

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(1) sold or otherwise disposed of a motor vehicle, trailer, or any part thereof when it knew the vehicle or part was stolen or was appropriated without the consent of the owner;

(2) committed forgery on a certificate of title covering a vehicle that has been re-assembled from parts obtained from the disassembling of other vehicles;

(3) committed any illegal act or omission which has caused loss as the result of a sale of a motor vehicle, trailer, or part thereof;

(4) failed to comply with this act or with a rule of the department;

(5) obtained a license fraudulently.

Section 10. (1) The department, through the attorney general or the county attorney of the county in which a facility is located, may sue to enjoin the operation or maintenance of an unlicensed motor vehicle wrecking facility either permanently or until compliance with this act and the rules of the department has been demonstrated to the satisfaction of the department.

(2) Violation of this act or a rule of the department adopted under this act is a misdemeanor.

Section 11. If any section, subsection, sentence, clause, or provision of the act is held invalid, the remainder of the act is not affected.

Section 12. Section 32-4515, R.C.M. 1947, is amended to read as follows:

"32-4515. **License required.** No person shall establish, operate or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right of way of any interstate or primary highway, without obtaining a license."

Section 13. Section 32-4516, R.C.M. 1947, is amended to read as follows:

"32-4516. **Issuance of license—fee—term—renewal.** The *department of health and environmental sciences, with the concurrence of the department of highways* shall have the authority to issue licenses for the establishment, maintenance and operation of junkyards within the limits herein defined."

Section 14. This act is effective July 1, 1973.

Approved: March 21, 1973.

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CHAPTER NO. 411

An Act Providing for Collection of Service Charges by Cities and Towns Operating a Municipal Sewer System; Giving of Notice to Owners of Real Estate of Delinquency in Payment of Service Charges; and Certification to the County Assessor of Real Estate Upon Which Service Charges Remain Unpaid; and Adding a New Section 84-4726.1, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 84-4726.1, R.C.M. 1947, which reads as follows:

84-4726.1. The council of any city or town operating a municipal sewer system may fix by ordinance the rates for service charges in advance or otherwise. The rates shall be uniform for like service in all parts of the municipality and shall be as nearly as possible equitable in proportion to the services and benefits rendered. An original charge for the connecting sewer line between the lot line and the sewer main may be assessed when such connecting sewer line is installed. The charges shall be collected by the treasurer.

On or before January 15 of each year, notice shall be given by the city or town treasurer to the owners of all lots or parcels of real estate to which sewer service has been furnished prior to January 1, by the city or town, and said notice shall specify the assessment owing and in arrears at the time of giving such notice. Such notice shall be in writing and shall state the amount of such arrearage, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance; that unless the same is paid by July 1 thereafter, the same will be levied as a tax against the lot or parcel of real estate to which sewer service was furnished and for which payment is delinquent as above specified. Such notice may be delivered to such owner personally, or by letter addressed to such owner at the post office address of such owner as recorded in the office of the county assessor.

On March 1, the treasurer of the city or town shall certify and file with the county assessor a list of all lots or parcels of real estate, giving the legal description thereof, to the owners of which notices of arrearage in payments were given as above specified and which arrearage still remain unpaid, and stating the amount of such arrearage, including any penalty and interest. The county assessor shall insert the same as a tax against such lot or parcel of real estate. Provided, that in cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall insert such delinquent amount, including penalty

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and interest, as a tax against the lot or parcel of real estate to which sewer service was furnished and payment for which is delinquent.

Approved: March 21, 1973.

CHAPTER NO. 412

An Act to Amend the Dangerous Drug Act, By Adopting Substantially the Definitions, Procedures, Standards and Schedules and the Regulatory Provisions of the Uniform Controlled Substances Act As Recommended by the National Conference of Commissioners on Uniform State Laws; By Excluding From Such Schedules Non-narcotic Drugs Which May Be Lawfully Sold Over the Counter Without A Prescription; By Repealing Sections 54-129, 54-130, 54-131, and 66-1504.1, R.C.M. 1947; Amending Sections 54-132 and 54-133, R.C.M. 1947, By Deleting References to Section 54-131, R.C.M. 1947; Amending Section 54-132 By Deleting the Provision Regarding Deferred Imposition of Sentence; Providing For Severability if any Part of This Act Is Determined Unconstitutional; and Repealing All Acts and Parts of Acts In Conflict Herewith.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. As used in this act:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) a practitioner (or by his authorized agent), or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(4) "Dangerous drug" means a drug, substance or immediate precursor in schedules I through V hereinafter set forth.

(5) "Counterfeit substance" means a dangerous drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint,

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number of device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(7) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(8) "Dispenser" means a practitioner who dispenses.

(9) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(10) "Distributor" means a person who distributes.

(11) "Drug" means:

(a) substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts or accessories.

(12) "Immediate precursor" means a substance which the board of pharmacists has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(13) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a dangerous drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the drug or labeling or

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relabeling of its container, except that this term does not include the preparation or compounding of a dangerous drug by an individual for his own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(a) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice, or

(b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(14) "Marihuana" means all parts of the plant cannabis sativa l., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(15) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in clause (a), but not including the isoquinoline alkaloids, of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(16) "Opiate" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as a dangerous drug under section 2 of this act, the

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dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(17) "Opium poppy" means the plant of the species papaver somniforum l., except its seeds.

(18) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(19) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(20) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state;

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state.

(21) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this act.

(22) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(23) "Ultimate user" means a person who lawfully possesses a dangerous drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(24) The term "prescription" shall be given the meaning it has in section 66-1502 (n), R.C.M. 1947.

Section 2. (1) The board of pharmacists shall administer this act and may add drugs to or delete or reschedule all drugs enumerated in the schedules in section 5, 7, 9, 11, or 13 of this act, pursuant to the rule-making procedures of the Montana Administrative Procedure Act. In making a determination regarding a drug, the board of pharmacists shall consider the following:

(a) the actual or relative potential for abuse;

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(b) the scientific evidence of its pharmacological effect, if known;

(c) the state of current scientific knowledge regarding the drug;

(d) the history and current pattern of abuse;

(e) the scope, duration, and significance of abuse;

(f) the risk to the public health;

(g) the potential of the drug to produce psychic or physiological dependence liability; and

(h) whether the drug is an immediate precursor of a drug already controlled under this act.

(2) After considering the factors enumerated in subsection (1) the board of pharmacists shall make findings with respect thereto and if it finds the drug has a potential for abuse it shall designate such drug a dangerous drug in the manner set forth in the Montana Administrative Procedure Act.

(3) If the board of pharmacists designates a drug as an immediate precursor, drugs which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(4) If any drug is designated, rescheduled, or deleted as a "controlled substance" under federal law and notice thereof is given to the board of pharmacists, the board of pharmacists shall similarly control the drug under this act after the expiration of thirty (30) days from publication in the federal register of a final order designating a drug as a "controlled substance" or rescheduling or deleting a drug, unless within that thirty (30) day period, the board of pharmacists objects to inclusion, rescheduling, or deletion. In that case, the board of pharmacists shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board of pharmacists shall publish its decision, which shall be final unless altered thereafter by the board or by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this act by the board of pharmacists, control under this act is stayed until the board of pharmacists publishes its decision.

(5) Authority to control under this section does not extend to distilled spirits, liquor, wine, malt beverages, beer, portar, ale, stout or tobacco.

(6) The board shall exclude any non-narcotic drug from a schedule if such drug may, under the Federal Food, Drug, and

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Cosmetic Act and section 27-716 (a) (2) of the Montana Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

Section 3. The dangerous drugs listed or to be listed in the schedules in sections 5, 7, 9, 11 and 13 are included by whatever official, common, usual, chemical, or trade name designated.

Section 4. The board of pharmacists shall place a drug in schedule I if it finds that the drug:

(1) has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

Section 5. (1) The dangerous drugs listed in this section are included in schedule I.

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: acetylmethadol, allylprodine, alphacetylmethadol, alphameprodine, alphamethadol, benzethidine, betacetylmethadol, betameprodine, betamethadol, betaprodine, clonitazene, dextromoramide, dextrorphan, diampromide, diethylthiambutene, dimenoxadol, dimepheptanol, dimethylthiambutene, dioxaphetyl butyrate, dipipanone, ethylmethylthiambutene, etonitazene, etoxeridine, furethidine, hydroxypethidine, ketobemidone, levomoramide, levophenacylmorphan, morpheridine, noracymethadol, norlevorphanol, normethadone, norpipanone, phenadoxone, phenampromide, phenomorphan, phenoperidine, piritramide, proheptazine, properidine, racemoramide, and trimeperidine.

(3) Any of the following opium derivaties, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation; acetorphine, acetyldihydrocodeine, benzylmorphine, codeine methylbromide, codeine-n-oxide, cyprenorphine, desomorphine, dihydromorphine, etorphine, heroin, hydromorphinol, methyl-desorphine, methyldihydromorphine, morphine methylbromide, morphine methylsulfonate, morphine-n-oxide, myrophine, nicocodeine, nicomorphine, normorphine, phoclodine, and thebacon.

(4) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic drugs, their salts, isomers and salts of isomers, unless specifically excepted,

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whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxy amphetamine, 5-methoxy-3, 4-methylenedioxy amphetamine, 3, 4, 5-trimethoxy amphetamine, bufotenine, diethyltryptamine, dimethyltryptamine, 4-methyl 1-2, 5-dimethoxylamphetamine, ibogaine, lysergic acid diethylamide, marihuana, mescaline, peyote, n-ethyl-3-piperidyl benzilate, n-methyl-3-piperidyl benzilate, psilocybin, psilocyn, tetrahydrocannabinols, 2, 5-dimethoxyamphetamine.

Section 6. The board of pharmacists shall place a drug in schedule II if it finds that:

(1) the drug has high potential for abuse;

(2) the drug has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) the abuse of the drug may lead to severe psychic or physical dependence.

Section 7. (1) The dangerous drugs listed in this section are included in schedule II.

(2) Any of the following drugs, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in paragraph (a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(3) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: alphaprodine, anileridine, bezitramide, dihydrocodeine, diphenoxylate, fentanyl, isomethadone, levomethorphan, levorphanol, metazocine, methadone, methadone—interme-

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diate, 4-cyano-2-dimethyl-amino-4, 4-diphenyl butane, moramide—intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane- carboxylic acid, pethidine, pethidine—intermediate—a, 4-cyano-1-methyl-4-phenylpiperidine, pethidine—intermediate—b, ethyl-4-phenylpiperidine-4-carboxylate, pethidine—intermediate—c, 1—methyl-4-phenylpiperidine-4-carboxylic acid, phenazocine, piminodine, racemethorphan, and racemorphan.

(4) Any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a stimulant effect on the central nervous system:

(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) phenmetrazine and its salts;

(c) any drug which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(d) methylphenidate.

Section 8. The board of pharmacists shall place a drug in schedule III if it finds that:

(1) the drug has a potential for abuse less than the drugs listed in schedules I and II;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to moderate or low physical dependence or high psychological dependence.

Section 9. (1) The dangerous drugs listed in this section are included in schedule III.

(2) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system:

(a) any drug which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those drugs which are specifically listed in other schedules;

(b) chlorhexadol;

(c) glutethimide;

(d) lysergic acid;

(e) lysergic acid amide;

(f) methyprylon;

(g) phencyclidine;

(h) sulfondiethylmethane;

(i) sulfonethylmethane; and

(j) sulfonmethane.

(3) Nalorphine.

(4) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(a) not more than one and eight tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than one and eight tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one (1) or more active, non-narcotic ingredients in recognized therapeutic amounts;

(c) not more than three hundred (300) milligrams of dehydrocodeinone, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than three hundred (300) milligrams of dihydrocodeinone, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one (1) or more active, non-narcotic ingredients in recognized therapeutic amounts;

(e) not more than one and eight tenths (1.8) grams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one (1) or more active, non-narcotic ingredients in recognized theraputic amounts;

(f) not more than three hundred (300) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one (1) or more ingredients in recognized therapeutic amounts;

(g) not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit,

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with one (1) or more active, non-narcotic ingredients in recognized therapeutic amounts;

(h) not more than fifty (50) milligrams of morphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one (1) or more active, non-narcotic ingredients in recognized therapeutic amounts.

(5) The board of pharmacists may except by rule any compound, mixture, or preparation containing any stimulant or depressant drug listed in subsections (2) and (3) from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a stimulant or depressant effect on the central nervous system.

Section 10. The board of pharmacists shall place a drug in schedule IV if it finds that:

(1) the drug has a low potential for abuse relative to drugs in schedule III;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to limited physical dependence or psychological dependence relative to the drugs in schedule III.

Section 11. (1) The dangerous drugs listed in this section are included in schedule IV.

(2) Any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system: barbital, chloral betaine, choloral hydrate, ethchlorvynol, ethinamate, methohexital, meprobamate, methylphenobarbital, paraldehyde, petrichloral, and phenobarbital.

(3) The board of pharmacists may except by rule any compound, mixture, or preparation containing any depressant drug listed in subsection (2) from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a depressant effect on the central nervous system.

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Section 12. The board of pharmacists shall place a drug in schedule V if it finds that:

(1) the drug has low potential for abuse relative to the controlled drugs listed in schedule IV;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) the drug has limited physical dependence or psychological dependence liability relative to the dangerous drugs listed in schedule IV.

Section 13. (1) The dangerous drugs listed in this section are included in schedule V.

(2) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one (1) or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(b) not more than two and five tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

Section 14. The board of pharmacists shall revise and republish the schedules of dangerous drugs annually.

Section 15. The board of pharmacists shall promulgate rules for its administration which are not inconsistent with this act and specifically shall levy and collect reasonable registration fees relating to the registration and control of the manufacture, distribution, and dispensing of dangerous drugs within the state; provided, however, the maximum fee for any registration shall not exceed one hundred dollars ($100) per year.

Section 16. (1) Every person who manufactures, distributes, or dispenses any dangerous drug within this state must, on and after January 1, 1974, obtain annually a registration issued by the board of pharmacists in accordance with its rules.

(2) Persons registered by the board of pharmacists under this act to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those drugs to the extent author-

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ized by their registration and in conformity with the other provisions of this act.

(3) The following persons need not register and may lawfully possess dangerous drugs under this act:

(a) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if he is acting in the usual course of his business or employment;

(b) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any dangerous drug is in the usual course of business or employment;

(c) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a schedule V drug;

(d) officers and employees of the state or a political subdivision of the state, while acting in the course of their official duties.

(4) The board of pharmacists may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(5) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses dangerous drugs.

(6) The board of pharamacists may inspect the establishment of a registrant or applicant for registration.

Section 17. (1) The board of pharmacists shall register an applicant to manufacture or distribute dangerous drugs included in sections 5, 7, 9, 11, and 13 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board of pharmacists shall consider the following factors:

(a) maintenance of effective controls against diversion of dangerous drugs into other than legitimate medical, scientific, or industrial channels;

(b) compliance with applicable state and local law;

(c) any convictions of the applicant under any federal and state laws relating to any dangerous drug;

(d) past experience in the manufacture or distribution of dangerous drugs, and the existence in the applicant's establishment of effective controls against diversion;

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(e) furnishing by the applicant of false or fraudulent material in any application filed under this act;

(f) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense dangerous drugs as authorized by federal law; and

(g) any other factors relevant to and consistent with the public health and safety.

(2) Registration under subsection (1) does not entitle a registrant to manufacture and distribute dangerous drugs in schedule I or II other than those specified in the registration.

(3) Practitioners shall be registered to dispense any dangerous drugs or to conduct research with dangerous drugs in schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board of pharmacists need not require separate registration for practitioners engaging in research with non-narcotic dangerous drugs in schedules II through V where the registrant is already registered under this act in another capacity. Practitioners registered under federal law to conduct research with schedule I drugs may conduct research with schedule I drugs within this state upon furnishing the board of pharmacists evidence of that federal registration.

(4) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this act.

Section 18. (1) A registration under section 16 to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board of pharmacists upon a finding that the registrant:

(a) has furnished false or fraudulent material information in any application filed under this act;

(b) has been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or

(c) has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board of pharmacists may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board of pharmacists suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of

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drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board of pharmacists shall promptly notify the bureau of all orders suspending or revoking registration and all forfeitures of dangerous drugs.

Section 19. (1) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the board of pharmacists shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall require the applicant or registrant to appear before the board of pharmacists at a time and place not less than thirty (30) days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty (30) days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(2) The board of pharmacists may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 17 or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants such action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board of pharmacists or dissolved by a court of competent jurisdiction.

Section 20. Persons registered to manufacture, distribute, or dispense dangerous drugs under this act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the board of pharmacists issues.

Section 21. Dangerous drugs in schedule I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section, unless the board of pharmacists prescribes particular forms to be used.

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Section 22. (1) No dangerous drug in schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board of pharmacists, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 19. No prescription for a schedule II drug may be refilled.

(3) A dangerous drug included in schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug and cosmetic acts shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(4) A dangerous drug included in schedule V shall not be distributed or dispensed other than for a medical purpose.

Section 23. (1) The board of pharmacists shall carry out educational programs designed to prevent and deter misuse and abuse of dangerous drugs. In connection with these programs it may:

(a) promote better recognition of the problems of misuse and abuse of dangerous drugs within the regulated industry and among interested groups and organizations;

(b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of dangerous drugs;

(c) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of dangerous drugs;

(e) disseminate the results of research on misuse and abuse of dangerous drugs to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of dangerous drugs.

(2) The board of pharmacists shall encourage research on misuse and abuse of dangerous drugs. In connection with the research, and in furtherance of the enforcement of this act, it may:

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(a) establish methods to assess accurately the effects of dangerous drugs and identify and characterize those with potential for abuse;

(b) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this act;

(ii) determine patterns of misuse and abuse of dangerous drugs and the social effects thereof; and

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of dangerous drugs; and

(c) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of dangerous drugs.

(3) The board of pharmacists may authorize persons engaged in research on the use and effects of dangerous drugs to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(4) The board of pharmacists may authorize the possession and distribution of dangerous drugs by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of dangerous drugs to the extent of the authorization.

Section 24. Section 54-132, R.C.M. 1947, is amended to read as follows:

"54-132. **Criminal sale of dangerous drugs.** (a) A person commits the offense of a criminal sale of dangerous drugs if he sells, manufactures, prepares, cultivates, compounds or processes any dangerous drug as defined in this act.

(b) A person convicted of criminal sale of dangerous drugs shall be imprisoned in the state prison for a term not less than one (1) year nor more than life."

Section 25. (1) Prosecution for any violation of law occuring prior to the effective date of this act is not affected or abated by this act.

(2) Civil seizures or forfeitures and injunctive proceedings

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commenced prior to the effective date of this act are not affected by this act.

(3) All administrative proceedings pending under prior laws which are superseded by this act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of the act. Any drug controlled under prior law which is not listed within schedules I through V is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(4) The board of pharmacists shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any dangerous drug prior to the effective date of this act and who are registered or licensed by the state.

(5) This act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

Section 26. Section 54-133, R.C.M. 1947, is amended to read as follows:

"54-133. **Criminal possession of dangerous drugs.** (a) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug as defined in this act.

(b) A person convicted of criminal possession of dangerous drugs, other than criminal possession of marihuana and its derivatives as hereinafter provided, shall be imprisoned by imprisonment in the state prison not to exceed five (5) years. Any person convicted of a criminal possession of marihuana or its derivatives in an amount, the aggregate weight of which does not exceed sixty (60) grams of marihuana, or one (1) gram of hashish, shall, for the first offense, be guilty of a misdemeanor and is punishable by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail not to exceed one (1) year, or by both such fine and imprisonment. A person convicted of a second, or subsequent, offense under this subsection is punishable by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail not to exceed one (1) year or in the state prison not to exceed three (3) years or by both such fine and imprisonment.

(c) A person of the age of twenty-one (21) years or under, convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence. Jurisdiction under this section shall be exclusively in the district court."

Section 27. Any orders and rules promulgated under any law affected by this act and in effect on the effective date of this

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act and not in conflict with it continue in effect until modified, superseded or repealed.

Section 28. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those other states which enact it.

Section 29. Practitioners who fail or refuse to register as required by this act, shall be guilty of a misdemeanor and upon conviction therefor may be fined not to exceed one thousand dollars ($1,000) or imprisoned in the county jail not to exceed one (1) year, or both.

Section 30. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 31. The laws specified below are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this act: sections 54-129, 54-130, 54-131 and 66-1504.1, R.C.M. 1947.

Section 32. All acts and parts of acts in conflict herewith are hereby repealed.

Approved: March 21, 1973.

CHAPTER NO. 413

An Act Authorizing Cities and Towns to Hold Elections on the Issuance of General Obligation Bond Issue Without There First Having Been Filed a Petition Calling Such Election; Authorizing the Issuance of Revenue Bonds Without an Election; Amending Sections 11-2301, 11-2306 and 11-2404, R.C.M. 1947; and Repealing Section 11-2307, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-2301, R.C.M. 1947, is amended to read as follows:

"11-2301. **Creation of indebtedness—submission to taxpayers.** Whenever the council or commission of any city or town having a corporate existence in this state, or hereafter organized under any of the laws thereof, shall deem it necessary to issue bonds *pledging the general credit of the municipality* for any purpose what-

ever, under its powers as set forth in any statute or statutes of this state, or amendments thereto, the question of issuing such bonds shall first be submitted to the electors of such city or town who are qualified to vote on such question, in the manner hereinafter set forth; provided, however, that it shall not be necessary to submit to such electors the question of issuing refunding bonds to refund bonds theretofore issued and then outstanding; *or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state;* provided further that no refunding bonds shall be issued unless such refunding bonds shall bear interest at a rate of at least one-half of one per cent (½ of 1%) less than the interest rate of the outstanding bonds to be refunded. In order to issue bonds to refund bonds theretofore issued and outstanding it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts with regard to the indebtedness to be refunded, showing the reason for issuing such refunding bonds, and fixing and determining the details thereof, giving notice of sale thereof in the same manner that notice is required to be given of sale of bonds authorized at an election and then following the procedure in this act for the sale and issuance of such bonds."

Section 2. Section 11-2306, R.C.M. 1947, is amended to read as follows:

"11-2306. **Petition for election—form—proof.** No bonds shall be issued by a city or town *pledging the general credit of the municipality* for any purpose, except to fund or refund warrants or bonds issued prior to and outstanding on July first, 1942, as authorized in section 11-2301, unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the city or town, and approved, as hereinafter provided. *Such an* election *may* be called *by the city or town council or commission on its passage of the necessary resolution as hereinafter provided or after* there has been presented to the council *or commission* a petition, asking that such election be held and question submitted, signed by not less than twenty per centum (20%) of the qualified electors of the city or town. Every petition for the calling of an election to vote upon the question of issuing bonds shall plainly and clearly state the purpose or purposes for which it is proposed to issue such bonds, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) petition, if each purpose with an estimate of the amount of bonds to be issued therefor is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets

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identical in form and fastened together, after being circulated and signed, so as to form a single complete petition before being delivered to the city or town clerk, as hereinafter provided. The petition shall give the street and house number, if any, and the voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating, such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the city or town clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate, under his official signature, which shall set forth:

(1) The total number of persons who are registered electors.

(2) Which, and how many of the persons whose names are subscribed to such petition, are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors of the city or town."

Section 3. There is a new section to be numbered 11-2307.1, R.C.M. 1947, which reads as follows:

11-2307.1. When the council or commission of any city or town deems it necessary to issue bonds pledging the general credit of the municipality pursuant to any statute of this state, the council shall pass and adopt a resolution which shall recite the purpose or purposes for which it is proposed to issue such bond, fix the amount of bonds to be issued for each purpose, determine the number of years through which such bonds are to be paid not exceeding the limits fixed in section 11-2303, and unless such bonds are revenue bonds not pledging the general credit of the municipality, making such provisions as are necessary for having the questions submitted to the qualified electors of the city or town at the next general city or town election or at a special election which the council or commission may call for such purpose. In cases where the bond issuances is proposed by petition the council or commission shall before submitting the measure to the electorate pass a resolution containing the information hereinabove required and in addition thereto, setting forth the essential facts in regard to the filing and presentation of the petition.

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Section 4. Section 11-2404, R.C.M. 1947, is amended to read as follows:

"11-2404. **Authorization of undertaking—form and contents of bonds.** The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality *without an election or, should the governing body in its sole discretion choose to submit the question to the electorate,* when authorized by a majority of the qualified electors voting upon such question at a special election noticed and conducted as provided in sections 11-2308 to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election.

Said bonds shall bear interest at such rate or rates not exceeding nine per cent (9%) per annum, payable semiannually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the the city of Chicago, Illinois, or the city of San Francisco, California, except that, in the event the bond issue is in an amount of less than one hundred fifty thousand dollars ($150,000), the bond issue shall be advertised at least five (5) days prior to such sale in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco, and also in a newspaper as specified in section 16-1201 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over. Pend-

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ing the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities."

Section 5. Section 11-2307, R.C.M. 1947, is repealed.

Approved: March 21, 1973.

CHAPTER NO. 414

An Act Requiring Each Camper to Be Registered and to Display Identifying Number and Decal; Charging each Camper Owner a One Dollar ($1) Fee for Registration of Each Camper; Amending Section 84-406, R.C.M. 1947; and Providing an Effective Date and Penalty.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The term camper as used in this act includes but is not limited to truck camper, chassis mounted camper, cab over, half cab over, non cab over, topper, telescopic, and telescopic cab over.

Section 2. No camper, subject to taxation in Montana, shall be operated by any person in the state of Montana on the public highways or streets unless there is displayed in a conspicuous place thereon a decal as visual proof that Montana personal property taxes have been paid thereon for the current year. Application for the issuance of such tax-paid decal shall be made to the department of revenue or the county treasurer upon forms to be furnished for this purpose, which may be obtained from the department or at the county assessor's office in the county wherein the owner resides, and is to provide for substantially the following information: name of owner, address, name of manufacturer, model number, make, year of manufacture, statement evidencing assessment, payment of property tax, and such other information as the department may require. Said application shall be signed by the county treasurer and transmitted by him to the department accompanied by a fee of one dollar ($1). Upon receipt of the application in approved form the department or county treasurer shall issue to the applicant a decal in the style and design prescribed by the department and of a different color than the preceding year, numbered numerically.

Section 3. Operation of a camper in violation of this act is

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a misdemeanor punishable by a fine not to exceed fifty dollars ($50).

Section 4. Application must be made to the department of revenue or county treasurer for the issuance of tax-paid decals annually. Campers may be operated between January 1 and February 15 in each year without displaying the current year's decal.

Section 5. Section 84-406, R.C.M. 1947, is amended to read as follows:

"84-406. **Time of assessment — motor vehicles — mobile homes — livestock — snowmobiles.** (1) The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first Monday of March next preceding. He must also ascertain and assess all mobile homes arriving in his county after 12 midnight of the first Monday of March next preceding. The procedure provided by this section shall not apply to:

(a) Motor vehicles which are required by subdivision (2) hereof to be assessed as of the first day January; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid.

(b) Livestock being fed in feeding pens or enclosures which may by subdivision (3) of this section be assessed on an average inventory basis. Credits must be assessed as provided in section 84-101, subdivision 6.

(c) Property defined in section 53-642 as "special mobile equipment" shall be subject to assessment of personal property taxes either on the date that application is made for a special mobile equipment plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March.

(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(e) Snowmobiles *and campers* which are required by subdivision 4 hereof to be assessed as of the first day of January.

(2) The assessor must ascertain and assess all motor vehicles, except mobile homes, in his county subject to taxation as of January 1 in each year, and the same shall be assessed to the

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persons by whom owned or claimed, or in whose possession or control such vehicle was at 12 midnight of the first day of January in each year. Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but said vehicles, and all other motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, and purchasers means and includes dealers who apply for registration or re-registration of a mobile home, nothing herein otherwise provided by section 32-3315. Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall continue to be assessed at full and true value as of the first Monday of March.

Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The assessed value of livestock being fed in feeding pens or enclosures on the first Monday in March may be computed by adding the value of livestock more than six (6) months of age being fed on the last day of each month since the last assessment date and dividing the sum by twelve (12).

(4) The assessor must ascertain and assess all snowmobiles *and campers* in his county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such snowmobile *or campers* was at 12 *M* of the first day of January in each year; provided, however, that snowmobiles *and campers* which constitute inventory of snowmobile dealers *and camper dealers* shall be assessed to the dealers as of 12 *M* of the first Monday of March in each year.''

Section 6. This act is effective for the tax year *1974* and thereafter.

Approved: March 21, 1973.

CHAPTER NO. 415

An Act Establishing the Salaries of Boards of County Commissioners in Certain Classes of Counties by Resolution; In-

creasing the Daily Salary in Certain Classes of Counties; Deleting the Maximum Annual Salary in Certain Classes of Counties; Setting the Mileage Allowance at Twelve Cents ($.12) Per Mile; Providing for a Salary Increase During a Term of Office; and Amending Section 16-912, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-912, R.C.M. 1947, is amended to read as follows:

"16-912. **Compensation of members of board.** (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary *to be established by resolution of the board of county commissioners in an amount not to exceed the annual salary established in the schedule in section 25-605, R.C.M. 1947, for the clerk and recorder.*

In addition, each member of the board of county commissioners in counties of the first, second, third and fourth class shall receive *twelve cents ($.12)* per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties.

(2) Each member of the board of county commissioners in all other counties is entitled to *a salary to be established by the board of county commissioners by resolution in an amount not to exceed thirty-five dollars ($35)* per day for each day's attendance on the sessions of the board and *twelve cents ($.12)* per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence, each day that such trip is actually made, provided, however, that any county commissioner whose place of residence is fifty (50) miles or more from the county seat, as measured by the usual route of travel, may elect to receive mileage as provided in this section or, in lieu of mileage, a sum of ten dollars ($10) per day for each day's attendance on sessions of the board as expenses, while engaged in the performance of his official duties, and no other compensation must be allowed."

Approved: March 21, 1973.

CHAPTER NO. 416

An Act to Amend Sections 75-7004, 75-7005 and 75-7019, R.C.M. 1947, to Allow the Trustees of a School District and the County Transportation Committee a Degree of Latitude in

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Granting Increases in Individual Transportation Based on an Isolation Chart Provided by the Superintendent of Public Instruction; and to Change the Board of Education to the Board of Public Education.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7004, R.C.M. 1947, is amended to read as follows:

"75-7004. **Duties of board of** *public* **education.** The board of *public* education, by and with the advice of the chief of the Montana highway patrol and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the Motor Vehicle Code, to provide uniform standards and regulations for the design, construction and operation of school buses in the state of Montana. Such policies shall:

(1) prescribe minimum standards for the design and construction of school buses not inconsistent with:

(a) the minimum standards adopted by the national commission on safety education; or

(b) the minimum standards adopted by the national highway safety bureau.

(2) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:

(a) the current specifications approved by the society of automobile engineers;

(b) the Motor Vehicle Code; and

(c) the requirement that all school buses shall have an alternately flashing pre-warning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with section 32-21-132, R.C.M. 1947.

(3) establish any other driver qualifications that may be deemed necessary in addition to the qualifications required in section 75-7003.

(4) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee which shall allow for the establishment of such areas without regard to the district boundary lines within the county.

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(5) prescribe any other criteria for the determination of the residence of a pupil that may be deemed necessary in addiiton to the criteria established in section 75-7016.

(6) prescribe any other policies for the operation of school buses which are not inconsistent with the Motor Vehicle Code, the minimum standards adopted by the national commission on safety education for school bus operation, the highway safety standards, and the transportation provisions of this Title.

(7) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the "rated capacity."

The board of *public* education shall prescribe any other policy necessary for the proper administration and operation of individual transportation programs that are not inconsistent with the transportation provisions of this Title."

Section 2. Section 75-7005, R.C.M. 1947, is amended to read as follows:

"75-7005. **Duties of the superintendent of public instruction.** In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

(1) prescribe rules, regulations, and forms for the implementation and administration of the transportation policies adopted by the board of *public* education.

(2) prescribe rules and regulations for the approval of school bus routing by the county transportation committee;

(3) prescribe the format of the contract for individual transportation and supply each county superintendent with a sufficient number of such contracts;

(4) prescribe rules and regulations for the approval of individual transportation contracts, including the increases of the schedule rates due to isolation under the policy of the board of *public* education; *and provide a degree of isolation chart to school district trustees to serve as a guide;*

(5) approve, disapprove, or adjust all school bus routing submitted by the county superintendent;

(6) approve, disapprove, or adjust all individual transportation contracts submitted by the county superintendent;

(7) prescribe rules and regulations for the consideration of controversies appealed to him, and rule on such controversies; and

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(8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of *public* education."

Section 3. Section 75-7019, R.C.M. 1947, is amended to read as follows:

"75-7019. **Schedule of maximum reimbursement for individual transportation including provisions for isolation, room and board, and supervised study programs.** The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of sections 75-7022 and 75-7023. These rates also shall constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1) When the parent or guardian provides the transportation conveyance, the following per diem rates shall be used to determine the total reimbursable amount for all eligible transportees residing in one household, including both elementary and high school pupils; except that eligible transportees shall be considered as coming from separate households when such eligible transportees are required by the trustees to attend schools in entirely separate communities and cannot be transported by the same conveyance or cared for in the same community. When the distance from the eligible transportee's residence to his assigned school is:

(a) not less than three (3) miles but less than five (5) miles, the rate shall be thirty cents ($.30) for one (1) eligible transportee and twelve cents ($.12) for each additional eligible transportee but shall not exceed sixty-six cents ($.66) for all the eligible transportees of one household;

(b) not less than five (5) miles but less than seven (7) miles, the rate shall be thirty-six cents ($.36) for one (1) eligible transportee and twelve cents ($.12) for each additional eligible transportee but shall not exceed eighty-four cents ($.84) for all the eligible transportees of one household.

(c) not less than seven (7) miles but less than twelve (12) miles, the rate shall be forty-eight cents ($.48) for one (1) eligible transportee and twelve cents ($.12) for each additional eligible transportee but shall not exceed one dollar and eight cents ($1.08) for all the eligible transportees of ont household; or

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(d) twelve (12) or more miles, the rate shall be sixty cents ($.60) for one (1) eligible transportee and twelve cents ($.12) for each additional eligible transportee but shall not exceed one dollar and twenty cents ($1.20) for all the eligible transportees of one household.

(2) When the parent or guardian provides the transportation conveyance from the eligible transportee's residence to an approved route of the school bus designated by the trustees for the transportation of such eligible transportee, the per diem rates prescribed in subsection (1) shall be used to determine the reimburseable amount for such transportation on the basis of the distance from the residence to such bus route. When the distance from the eligible transportee's residence to the approved bus route is not less than one and one-half (1½) miles but less than three (3) miles, the reimbursement rate shall be one-half (½) the rate prescribed in subsection (1)(a) above. No transportation reimbursement shall be paid to a parent or guardian when the distance is less than one and one-half (1½) miles.

(3) Where, due to excessive distances, impassable roads or other special circumstances of isolation, the rates prescribed in subsections (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, his parent or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increase rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay such increased rate due to isolation. *The* percentage increases of the per-day individual transportation rates prescribed in subsections (1) and (2) in relation to the degree of isolation, except that such increases shall not exceed one hundred per cent (100%).

(4) When the isolated conditions of the household where an eligible transportee resides requires such eligible transportee to live away from the household in order to attend school, he shall be eligible for the room and board reimbursement. Approval to receive the room and board reimbursement shall be obtained in the same manner prescribed in subsection (3) above.

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The per diem rate for room and board shall be one dollar and fifty cents ($1.50) for one eligible transportee, sixty cents ($.60) for a second eligible transportee of the same household and thirty cents ($.30) for each additional eligible transportee of the same household.

(5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate shall be the cost of such study; provided that the course of instruction is approved by the trustees and supervised by the district.

(6) The schedules provided in this section shall not be altered by any authority other than the legislative assembly of the state of Montana, except as provided in subsection (3)."

Approved: March 21, 1973.

CHAPTER NO. 417

An Act to Amend Section 75-7403, R.C.M. 1947, to Provide That the Number of Hours in a School Day May Be Reduced if the Total Number of Hours in the School Week Are Not Less Than Thirty (30); and Providing For Approval of Reduction by the Board of Education.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7403, R.C.M. 1947, is amended to read as follows:

"75-7403. **School day.** A school day of pupil instruction shall be at least two (2) hours for kindergartens and all other preschool programs, at least four (4) hours for grades one (1) through three (3), and at least six (6) hours for grades four (4) through twelve (12). *The number of hours in any one school day for grades four (4) through twelve (12) may be reduced by one (1) hour if the total number of hours in the school week is not less than thirty (30) hours.* The number of hours in a school *week* may be reduced, in an emergency, with the approval of the board of education."

Approved: March 21, 1973.

CHAPTER NO. 418

An Act to Amend Sections 16-1230, 16-1231 and 16-1232, R.C.M. 1947, to Permit Counties To Contract With Printing Establishments For County Printing.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-1230, R.C.M. 1947, is amended to read as follows:

"16-1230. **County commissioners to contract for county printing.** *It is hereby made the duty of the county commissioners of the several counties of the state of Montana to contract with one (1) newspaper, published at least once a week, and of general bona fide and paid circulation with second class mailing privileges, published within the county, and having been published continuously in such county at least twelve (12) months immediately preceding the awarding of such contract, to do and perform all the printing for which said counties may be chargeable, including all legal advertising required by law to be made, and all other printed forms required for the use of such counties at not more than the prices set by the board of county printing.*

Nothing in this act shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this act, or to let contracts at prices less than the maximum fixed by the board of county printing.

In any county in which no newspaper owns or operates a commercial printing establishment, the county commissioners shall separate the printing contract into two (2) parts, one of which shall provide for the publication of legal advertising only, such contract being let to a legally qualified newspaper; and the other contract shall provide for all printed forms, materials and supplies required by the county, which contract shall be let to a commercial printing establishment which shall have been in business in the county for at least one (1) year; provided, however, that in no case shall any contract call for payment by the county of any prices in excess of the maximum fixed by the board of county printing."

Section 2. Section 16-1231, R.C.M. 1947, is amended to read as follows:

"16-1231. **Contractor's bond—subletting.** The contract shall be let to the *printing establishment* that in the judgment of the county commissioners shall be most suitable for performing said work, provided, that the county commissioners shall require of any contractor to do such county printing, a good and sufficient deposit in such sum as said commissioners may deem advisable, signed by at least two (2) sufficient sureties, conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this act and the terms

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of such contract; provided that nothing in this act shall be construed so as to compel the acceptance of unsatisfactory work; also provided, however, that this requirement shall not affect any contract made prior to the passage of this act. Such contract for printing shall extend for a period of not more than two (2) years. All *printing establishments* which may receive any contract for printing under this act and which may not be able to execute any part of such contract shall be required to sublet such contract or portion of contract to some printing establishment within the *county if such is available, and if not within the* state, which shall do the work under the contract so sublet entirely within the state with Montana labor."

Section 3. Section 16-1232, R.C.M. 1947, is amended to read as follows:

"16-1232. **Competitive bids permitted—contracts at less than maximum prices.** *The board of county commissioners shall call for competitive bids from persons or firms qualified to bid on county printing under the terms of this act.*"

Approved: March 21, 1973.

CHAPTER NO. 419

An Act Amending Sections 75-7102 and 75-8122, R.C.M. 1947, Providing that Community College Districts Shall Have Bonding Authority and Shall Have Authority to Borrow Moneys.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-7102, R.C.M. 1947, is amended to read as follows:

"75-7102. **Definition of school district for bonding purposes.** For the purpose of indebting an elementary district, a high school district, *or a community college district* by the issuance of bonds under the provisions of this Title, the term "school district" shall mean any elementary district, high school district, *or community college district,* except the following types of high schools recognized as high school districts without a bonding authority in section 75-6501:

(1) High schools operated by an elementary district in a county that has not been divided into high school districts; or

(2) County high schools located in a county that has not

been divided into school districts by the county high school boundary commission."

Section 2. Section 75-8122, R.C.M. 1947, is amended to read as follows:

"75-8122. **Sources of financing for and types of capital expenditures.** The board of trustees of any community college district is hereby vested with the power and authority to:

(1) build, enlarge, alter, repair or acquire by purchase school buildings and dormitories;

(2) furnish and equip such buildings;

(3) purchase sites for such buildings;

(4) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds chapter of this title.

The board of trustees of a community college district is further vested with the power and authority to accept or borrow moneys for the purposes of this section *and to repay such obligations from the various revenues of the college."*

Approved: March 21, 1973.

CHAPTER NO. 420

An Act to Create a State Banking Board Within the Department of Business Regulation and to Prescribe its Powers, Duties and Responsibilities.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is hereby created and established within the department of business regulation a state banking board. Said board shall be composed of seven (7) members, one (1) of whom shall be the director of business regulation, who shall be the chairman of the board and shall act as its executive officer. The remaining six (6) members of the board shall be appointed with consideration being given banks of small, medium and large size and to geographical distribution and at least one (1) banker member and one (1) public member shall be appointed from each congressional district of the state. Two (2) of said six (6) members shall be active officers in state banks of Montana, one (1) shall be an active officer of a national bank doing business in Montana and three (3) shall be members of the public, none of

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whom shall be an officer, director or shareholder of any state or national bank.

Section 2. The members of the state banking board shall be appointed by the governor. All members except the director of business regulation shall be appointed after the passage and approval of this act and their terms shall commence with the effective date of this act, two (2) for a term of one (1) year, two (2) for a term of two (2) years and two (2) for a term of three (3) years and thereafter their successors shall be appointed for terms of three (3) years so that their terms shall be overlapping, two (2) to be appointed each year. Any vacancies shall be filled by appointment for the unexpired period of the term involved. No member other than the director of business regulation shall serve for more than two (2) consecutive terms.

Section 3. The board shall elect from its members a secretary to serve at the pleasure of the board. In performing its functions the board shall have use of the offices, equipment and personnel of the department of business regulation as it requires. The board shall hold regular meetings each quarter at a fixed date and time at the office of the department of business regulation. Special meetings may be called at any time by the chairman upon three (3) days notice to the members. A quorum for all meetings shall be a majority of the board members and action may be taken by a majority of the quorum present at any meeting. The chairman shall have a voice but no vote in all meetings except to break a tie. Any board member except the chairman may be removed by the governor without cause in any case. The board members, except the chairman, shall be paid twenty-five dollars ($25) per day or any part thereof devoted to the performance of their duties, and actual and reasonable expenses incurred in the performance of their duties and mileage as provided by law to state officers. The costs and expenses of the board shall be legitimate charges of the department of business regulation.

Section 4. The state banking board shall have the following powers in addition to any others that hereafter may be granted to it by law:

(1) to make final determinations upon applications for charters for new banks, mergers, consolidations, and relocations of banks;

(2) to act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the director of business regulation as said duties and powers relate to banking.

Section 5. The board shall adopt rules and regulations to the extent and in the manner as provided in the Montana Admini-

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strative Procedure Act. In addition, the board shall, in the manner provided in said act and as expeditiously as possible, adopt rules as it deems necessary and proper to implement its duties and powers.

In particular, the board shall give priority to promulgation of rules concerning the chartering of new banks. Such rules shall contain minimum standards under which an application for a new bank shall be determined. Such standards shall include the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank at the proposed location;

(2) that the bank will be owned and managed by persons of good moral character and financial integrity, and will be safely and soundly operated;

(3) a persuasive showing that the new bank will have a sufficient volume of business to assure solvency and that establishment of the new bank will be in the public interest.

Section 6. In addition to the requirements of the Montana Administrative Procedure Act, the following shall be required: A hearing shall be conducted upon all applications for new bank charters, and all provisions of the Administrative Procedure Act relating to a contested case shall be followed, whether or not any protest to the application is filed. A notice of the filing of an application for a new bank charter shall be mailed to all banks within one hundred (100) miles of the proposed location, measured in a straight line. A hearing shall be conducted no sooner than thirty (30) days and not later than ninety (90) days following the mailing of such notice. Any bank filing a written protest with the board prior to the date of the hearing shall be admitted as a "party," as defined in the Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, and the right to receive all notices, copy of the application, all orders, and the right of judicial review and appeal. All applications for mergers, consolidations or relocations of banks shall likewise require a hearing, and all of the rights and procedures stated herein shall apply to these matters.

Section 7. The board shall permit prehearing discovery procedures, including the taking of depositions and the production of documents. In such discovery procedures, the rules of civil procedures for state courts shall furnish guidelines for these purposes. As soon as practicable, the board shall adopt rules regarding discovery procedures, but until this is accomplished, the foregoing shall apply.

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In adopting rules for hearings, the board shall provide for the issuance of subpoenas and for the administration of oaths to witnesses and parties or their representatives, to apply both to discovery procedures and to hearings, and the board shall have authority to provide for issuance of subpoenas and administration of oaths.

Section 8. Any board member shall disqualify himself from acting upon any matter in which he or any bank or financial institution in which he has a direct or indirect interest is involved competitively or otherwise.

Section 9. The provisions of this act shall not apply to any application filed prior to January 1, 1973.

Approved: March 21, 1973.

CHAPTER NO. 421

An Act to Amend Section 16-2050, R.C.M. 1947, to Permit Investment of County, School District and County High School Moneys Under the State Unified Investment Program; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-2050, R.C.M. 1947, is amended to read as follows:

"16-2050. **Investment of county moneys in county warrants and investment of school district or county high school moneys.** (1) Except as provided in subsection (2) of this section, whenever the county has under its control any moneys, for which there is no immediate demand, in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter when such county warrant is pre-

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sented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder. Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings, or for other construction, may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less when emergency conditions, beyond the control of the county commissioners, exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made. Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of subsection (6) of section 16-2618.

(2) Whenever the county has under its control any moneys realized from the sale of bonds by a school district or county high school for the purpose of construction, for which there is no immediate demand, which in the judgment of the governing body of the school district or county high school it would be advantageous to invest in any time or savings deposits or in short-term obligations of the United States of America, such governing body may in its discretion direct the county treasurer to make such investments. Interest earned from such investments, except interest on the sale of bonds accrued in the period between the date of issue and the time of purchase which must be credited to the sinking fund, may be credited to the sinking fund of the said school district or county high school, provided that in the event construction of said buildings is delayed for a period longer than six (6) months due to court action or other causes beyond the control of the trustees, the trustees may direct that interest earned be credited to the fund from which the money was withdrawn. The trustees may authorize expenditures from interest earned, except as provided above, for furnishing and equipping the buildings for which the bonds were sold.

(3) No provision of this section may be construed to prevent the investment of county, school district, or county high school moneys under the state unified investment program established in title 79, chapter 3."

Section 2. This act is effective on its passage and approval.

Approved: March 21, 1973.

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CHAPTER NO. 422

An Act to Amend Section 53-106.1, R.C.M. 1947, to Provide That Any Motor Vehicle Manufactured After 1934 and More Than Thirty (30) Years Old May Be Registered As A Vintage Vehicle.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 53-106.1, R.C.M. 1947, is amended to read as follows:

"53-106.1. **Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles.** Any owner of a motor vehicle manufactured *in 1933 or earlier or manufactured in 1934 or later and is* more than thirty (30) years *old, used* solely as a collectors' item and not for general transportation purposes, may file with the registrar of motor vehicles an application for the registration of such motor vehicle stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number, and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes; and said application shall be sworn to before an officer authorized to administer oaths. The registration fee for all such motor vehicles weighing twenty-eight hundred and fifty (2850) pounds or less shall be five dollars ($5.00), and the registration fee for all such motor vehicles weighing more than twenty-eight hundred and fifty (2850) pounds shall be ten dollars ($10.00).

Upon receipt of said application for registration and payment of the registration fee above provided for the registrar shall file said application and register the motor vehicle therein described in the manner specified in section 53-101, and shall deliver to the applicant:

(1) for motor vehicles manufactured in 1933 or earlier, two (2) license plates bearing the inscription, "Pioneer—Montana" and the registration number; or

(2) for motor vehicles manufactured in 1934 or later and more than thirty (30) years old, two (2) license plates bearing the inscription, "Vintage—Montana" and the registration number. The year of issuance shall not be shown on the plates. No annual renewal of the registration of any such motor vehicle shall be required, and the same shall be valid as long as the vehicle is in existence; provided, however, that upon any sale of such motor vehicle, the

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purchaser shall be required to renew the registration thereof and pay the license fees hereinbefore specified."

Approved: March 21, 1973.

CHAPTER NO. 423

An Act Relating to the Electrical Safety Act; Amending Section 66-2812, R.C.M. 1947, Relating to Exemptions of Coverage of the Act Pertaining to Electrical Utility Companies, Individuals Doing Electrical Work on their own Premises and Cities' Signal and Communications Equipment.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-2812, R.C.M. 1947, is amended to read as follows:

"66-2812. **Exemptions.** (a) Nothing in this act shall be deemed to apply to *the installation, alteraton or repair of electrical signal or communications equipment owned or operated by a public utility or a city.* The licensing *or inspection* provisions of this act shall not apply to persons making electrical installations on their own property or to regularly employed maintenance electricians working on the premises of their employer *or to regularly employed maintenance electricians.*

(b) Nothing in the article shall be construed to require any individual to hold a license before doing electrical work on his own property *or residence, provided that said property or residence is maintained for his own use.*

(c) Any person may work as an apprentice to a licensed electrician but shall not do any electrical wiring for or installation of electrical apparatus or equipment for light, heat, or power, except with and under the direct supervision of a licensed electrician.

(d) An individual, firm, copartnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, copartnership, or corporation is under the direction and control of a licensed master electrician.

(e) Any person who plugs in an electrical appliance where approved electrical outlet is already installed shall not be considered as an installer.

(f) No provisions of this article shall in any manner interfere with, hamper, preclude or prohibit any vendor of any elec-

trical appliance, from selling, delivering and connecting any electrical appliance, if the connection of said appliance does not necessitate the installation of electrical wiring of the structure where said appliance is connected."

Approved: March 21, 1973.

CHAPTER NO. 424

An Act To Provide Procedures For Fire Drills In Schools; and Repealing Sections 75-8308 and 75-8309, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 75-8308.1, R.C.M. 1947, which reads as follows:

75-8308.1. Fire exit drills shall be conducted regularly in accordance with the applicable provisions of the following sections.

Section 2. There shall be at least eight (8) fire exit drills a year in schools. In climates where the weather is severe during the winter months, weekly drills should be held at the beginning of the school term to complete the required number of drills before cold weather so as not to endanger the health of the pupils.

Section 3. Drills shall be executed at different hours of the day or evening; during the changing of classes; when the school is at assembly; during the recess or gymnastic periods, etc., so as to avoid distinction between drills and actual fires.

Section 4. All fire exit drill alarms shall be sounded on the fire alarm system and not on the signal system used to dismiss classes.

Section 5. Whenever any of the school authorities determine that an actual fire exists, they shall immediately call the local fire department using the public fire alarm system or such other facilities as are available.

Section 6. The recall signal shall be one that is separate and distinct from and cannot be mistaken for any other signals. Such signals may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls shall be kept under lock, the key for which shall be in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a fire. Regardless of the method of recall, the means of giving the signal shall be kept under a lock.

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Section 7. It shall be the duty of the school authorities to inspect all exit facilities periodically in order to make sure that all stairways, doors and other exits are in proper condition and cooperate with local fire department authorities in conducting fire drills.

Section 8. Sections 75-8308 and 75-8309, R.C.M. 1947, are repealed.

Approved: March 21, 1973.

CHAPTER NO. 425

An Act Relating to the Electrical Safety Law; and Amending Section 66-2802, R.C.M. 1947, Relating to the Purpose of the Act to Establish the National Electrical Code as a Minimum Approved Safety Standard to Provide Procedures for Establishing Standards More Stringent Than the National Electrical Code.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-2802, R.C.M. 1947, is amended to read as follows:

"66-2802. **Purpose.** (1) The purpose of this act is to protect the health and safety of the people of Montana from the danger of electrically caused shocks, fires and explosions and to protect property from the hazard of electrically caused fires and explosions, and to establish a procedure for determining where and by whom electrical installations are to be made and to assure the public that persons making electrical installations are qualified, and that the electrical installations and electrical products made and sold within this state meet minimum safety standards. From and after the taking effect of this act, all installations in the state of Montana of wires and equipment to convey electric current and installations of apparatus to be operated by such current, except as hereinafter provided, shall be made substantially in accord with the National Electrical Code, as approved by the American standards association, relating to such work as far as the same covers both fire and personal injury hazards, and as the National Electrical Code shall be amended, revised, compiled and published from time to time and as such amendments or revisions are adopted by the board. *The standards as set forth in such National Electrical Code shall be prima facie evidence of minimum approved methods of construction for safety to life and property. The affirmative vote of a majority of all appointed members of the board of electricians shall be required*

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to set any standards that are more stringent than those set forth in the National Electrical Code.

(2) Rules and standards relating to buildings and equipment covered by the state or a municipal building code are not effective until approved by the state building code council and filed with the secretary of state."

Approved: March 21, 1973.

CHAPTER NO. 426

An Act to Provide for a Three (3) Day Cooling-off Period on Door-to-Door Sales Contracts.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The purpose of this act is to afford consumers, subjected to high pressure door-to-door sales tactics, a "cooling-off" period.

Section 2. As used in this act:

(1) "Consumer transaction" means a transaction where the money, property, or service which is the subject of the transaction is primarily for personal, family or household purposes.

(2) "Home solicitation sale" means a consumer transaction in which the purchase price is twenty-five dollars ($25) or more, and the seller or a person acting for him, is a person doing business who engages in a personal solicitation of a sale at a residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. A sale which but for the fact that it is a cash sale would be a home solicitation sale shall be deemed a home solicitation sale if the seller makes or provides a loan to the buyer or obtains or assists in obtaining a loan for the buyer to pay any part of the purchase price. The term "home solicitation sale" does not include a transaction

(a) made pursuant to a preexisting revolving charge account, or pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or

(b) in which the buyer has a right of cancellation pursuant to federal law.

Section 3. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price

may cancel a home solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to such sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

(5) A home solicitation sale may not be cancelled if in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer.

Section 4. (1) The seller shall furnish the buyer a notice which shall contain the statement set forth in paragraph (a) and printed in capital and lower case letters of not less than twelve (12) point bold faced type with the seller's name and business address and the statement set forth in paragraph (b),

(a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS DAYS.

If you decide within three days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed BY CERTIFIED MAIL within three days after you sign the contract.

(date)

(b) CONTRACT SIGNED

I hereby cancel this sale.

(Buyer's signature)

(2) Until the seller has complied with the this section the buyer or any other person obligated for any part of the purchase price may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel; provided, however, that failure to mail the cancellation by certified mail does not nullify the cancellation as long as the cancellation is mailed within the prescribed time period. The period prescribed by section 3 shall begin to run from the time the seller complies with this section.

Section 5. (1) Except as provided in this section, within ten (10) days after a home solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the

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buyer any payments made by the buyer and any note of other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment and if the buyer is successful in his action therefor the court shall also award him one hundred dollars ($100) plus reasonable attorney's fees and costs.

(4) Until the seller has complied with this section the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled.

Section 6. (1) Except as provided by subsection (4) of section 5, within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his residence. If the seller fails to demand possession of such goods within a reasonable time after cancellation or revocation, the goods shall become the property of the buyer without obligation to pay for them. For the purpose of this section, forty (40) days shall be presumed to be a reasonable time.

(2) The buyer shall take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk and such goods must be returned in substantially the same condition as received.

Approved: March 21, 1973.

CHAPTER NO. 427

An Act Authorizing Cities, Counties and Airport Authorities to Impose Reasonable Passenger Service Charges for the use of Certain Public Airports to be Collected Either By Passenger Air Carriers, If They Agree To Collect The Charge On A Contract Basis, or to be Collected By Airport Personnel; Pro-

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viding For Reporting, Collection, Disposition and Use Thereof; Providing Penalties; and Providing An Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. As used in this act: "Passenger air carrier" means a common carrier of passengers for hire by aircraft weighing over twelve thousand five hundred (12,500) pounds on a regular schedule or schedules, and a carrier of passengers for hire by aircraft weighing over twelve thousand five hundred (12,500) pounds on a contract or charter basis.

Section 2. (1) Every city or county or airport authority which constructs, operates or maintains, individually or jointly, a public airport with funds contributed in whole or in part, directly or indirectly, by the state, county, city or other public authority, is authorized and empowered to charge a reasonable service charge *not to exceed two dollars ($2) per day,* for each passenger enplaning upon every passenger air carrier aircraft at any such public airport as a point of origin for transportation purposes. The charge authorized to be imposed herein is in consideration of the use of the airport and associated airport facilities provided by the public for taking off and landing of commercial passenger aircraft, for providing facilities for the passengers thereof, and to help defray the cost of furnishing, operating, improving, maintaining and protecting the public airport and related facilities and the passengers, crews and equipment. The charge herein provided for is in addition to any other charges that may be required or imposed by the authority for transportation or other services provided. In the alternative, said city, county, or airport authority may collect the charge itself or cause said service charge to be collected directly from the enplaning passenger by its agents or employees.

(2) Each passenger air carrier which agrees by contract to collect said service charge shall:

(a) before the fifteenth of each month, file with the city, county, or airport authority, or responsible board thereof, a return showing the number of passengers for hire enplaning on aircraft of the passenger air carrier at the respective airport during the preceding calendar month;

(b) file with the return, additional other pertinent information required by the respective airport;

(c) remit with the return, the service charges imposed under this act, if, by agreement with the airport board or authority, they have contracted to collect the charge from the enplaning passenger.

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(3) Before the first day of the calendar month following that in which a return is filed, the respective airport board or governing authority shall:

(a) audit the return;

(b) make any exceptions to the report in writing to the air carrier. If none is made, the report and remittance will be deemed correct;

(c) in the case of a jointly operated airport, the carrier will remit to the governing board who shall be responsible for its proper disposition as directed by the governing bodies in accordance with the provisions below.

(4) All service charges received by counties and cities under the provisions of this act shall be deposited in the airport fund of the county or city or in the joint airport fund of the city and county and shall be used for construction, improvement, operation, maintenance, protection and repair of its public airport or for the retirement of bonds issued for the construction, improvement or other expenditures of the airport, including the protection of aircraft passengers, crews and air carrier equipment.

Section 3. Nothing in this act shall prevent a passenger air carrier from collecting, directly or indirectly, the service charge payable for each paying passenger from the passenger, but the air carrier shall collect the service charge only if it enters into a voluntary agreement to do so.

Section 4. If any person, firm, or corporation subject to the provisions of this act fails or neglects to pay the service charges, the same may be collected through civil proceedings in an appropriate court. Passengers refusing to pay said service charge shall be guilty of a misdemeanor, punished accordingly, and, also, they may be refused permission to enplane.

Section 5. Air carrier may, by contract with the airport board or authority involved, collect the charge from the passenger, and in so doing, be entitled to a fee for doing so. This may be a percentage of said charge. Or, the airport board or authority may collect the charge directly from the enplaning passenger. *Provided, however, no passenger shall pay more than one (1) charge during any twenty-four (24) hour period, even though they may board several planes in different Montana cities during that period. In such cases, only the charge, if any, in effect at the first airport used during said twenty-four (24) hour period shall govern. No other charge shall be payable at any other airport by that same passenger during the same twenty-four (24) hour period.*

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Section 6. This act is effective thirty (30) days after its passage and approval.

Approved: March 21, 1973.

CHAPTER NO. 428

An Act for the Codification and General Revision of the Laws Relating to the Department of State Lands, and Providing That This Act Is Effective Upon Its Passage and Approval.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 50-702, R.C.M. 1947, is amended to read as follows:

"50-702. **Record of certificate of location.** Within sixty (60) days after posting the notice of location, the locator shall record his location in the office of the county clerk of the county in which *the* mining claim is situated, and within twenty (20) days thereafter the county clerk shall provide a copy thereof to the department of state lands, Helena, Montana. *The* record shall consist of a certificate of location for each claim containing:

1. The name of the lode or claim and whether located as a lode or placer claim.

2. The name of the locator or locators, if there be more than one, together with the post-office address of such locator or locators.

3. The date of location, and *the* description of *the* claim, with reference to some natural object or permanent monument, as will identify the claim and the section, township, and range wherein the claim is situated (by projected survey lines if located in unsurveyed country).

4. The directions and distances from the discovery point which describe the claim.

The certificate of location must be varified, before some officer authorized to administer oaths, by the locator, or one of the locators if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. A certificate of location so verified, or a certified copy thereof, is prima facie evidence of all facts properly recited therein. Failure of the locator or locators to record a certificate of lo-

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cation as herein required shall create a prima facie presumption of intent to abandon. However, recordation after the sixty (60) day period, but before the ground is located by another renews the location and saves the rights of the original locator. Nothing contained in section 50-713 *affects* the prima facie presumption created by this section."

Section 2. Section 81-102, R.C.M. 1947, is amended to read as follows:

"81-102. **Definitions.** *Unless the context requires otherwise, in this title: (1) "Department" means the department of state lands provided for in title 82A, chapter 11.*

(2) "Board" means the board of land commissioners provided for in article X, section 4 of the constitution of this state.

(3) "Commissioner" means the commissioner of state lands provided for in section 82A-1104.

(4) "State land" or "lands" means lands granted to the state by the United States for any purpose, either directly or through exchange for other lands; lands deeded or devised to the state from any person; and lands that are the property of the state through the operation of law. The term does not include lands the state conveys through the issuance of patent, or those lands used for building sites, campus grounds, or experimental purposes by any state institution that are the property of that institution."

Section 3. Section 81-103, R.C.M. 1947, is amended to read as follows:

"81-103. **Powers and duties of board.** The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands, and *subject to the investment authority of the board of investments,* the funds arising from the leasing, use, sale, and disposition of *those* lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle *is* that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well-being of the people of this state; and the board *shall* administer this trust to secure the largest measure of legitimate and reasonable advantage to the state. *The board shall* manage these lands under the multiple-use management concept defined as: The management of all the various resources of the state lands so that they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments

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in use to conform to changing needs and conditions; that some land will be used for less than all of the resources, and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources."

Section 4. Section 81-104, R.C.M. 1947, is amended to read as follows:

"81-104. **Meetings of board.** The board shall hold regular meetings *at least once* each month, and may hold special meetings whenever *considered* necessary, upon call of the president or a majority of the members. Three *(3)* members of the board constitute a quorum for the transaction of business. The governor *is* the president of the board; in his absence the lieutenant governor, *shall preside, and in his absence* the superintendent of public instruction shall preside."

Section 5. Section 81-204, R.C.M. 1947, is renumbered section 81-105, and is amended to read as follows:

"81-105. **Powers and duties of** *the department.* Under the direction of the board *of land commissioners, the department has* charge of the selecting, exchange, classification, appraisal, leasing, management, sale, *or* other disposition of the state lands. *It* shall perform such other duties the board *directs,* the purpose of the department *demands,* or the statutes require. *It* shall collect and receive all moneys payable to the state through *its* office as fees, rentals, royalties, interest, penalties, *or* payments on mortgages or lands purchased from the state or derived from any other source. *It* shall issue a receipt for each cash payment, or whenever requested by the payer."

Section 6. Section 81-205, R.C.M. 1947, is renumbered section 81-1122, and is amended to read as follows:

"81-1122. **Reports by state treasurer.** On or before the tenth day of each calendar month, the state treasurer shall report to the *department* the amount of money received by him during the preceding month from each source, except from the *department,* for each income fund and each permanent fund arising from a federal land grant or otherwise under the control of the board, the amount paid out from each income fund or permanent fund during *the* month and the object of such payment, and the balance uninvested in each fund. *These* reports shall be on such forms and contain such additional information the *department prescribes* and the board *approves."*

Section 7. Section 81-301, R.C.M. 1947, is amended to read as follows:

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"81-301. **Selection and location of lands granted by United States.** Under the general direction of the board of land commissioners and as rapidly as the appropriations for the work will permit, the *department* shall *select* and *locate* all lands, except timberlands, granted to this state by the United States for any purpose, and not located by the grant itself. *It* shall also *select* and *locate* lands in lieu of all those lands in sections sixteen *(16)* and thirty-six *(36)* and in the other federal land grants which for any reason have been lost to the state. All selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for these lands for domestic use, livestock, and irrigation."

Section 8. Section 81-302, R.C.M. 1947, is amended to read as follows:

"81-302. **Classification — reclassification — records.** *(1)* The *state* lands *are* classified as follows:

(a) Class 1. Grazing lands, being all those lands which are valuable only for grazing purposes.

(b) Class 2. Timberlands, being all those lands which are principally valuable for the timber that is on them.

(c) Class 3. Agricultural lands.

(d) Class 4. Lands within the limits of any town or city or within three *(3)* miles of *those* limits.

(2) The third class, agricultural lands, *is* subdivided into two *(2)* classes as follows:

(a) Irrigable lands.

(b) Nonirrigable lands.

(3) The fourth class *is* subdivided as follows:

(a) Lands within the limits of any town or city.

(b) Lands not within such limits but within three *(3)* miles thereof.

(4) The classification shall be so made as to place each *forty (40) acre* tract or lot in the class to which it properly belongs.

(5) If lands formerly nonirrigable become irrigable, *or if* new towns or cities are located and platted, *or in any other case* when the board *considers* it necessary, the lands affected shall be reclassified so that no state land will be sold under a different classification from that to which it actually belongs.

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(6) All field books, plats, maps, and records of the department shall show the class to which each tract therein belongs, and whether it belongs to the public schools of the state or to *a* state *institution* or other entity according to the grant or instrument by which title to *the* land has passed to the state; they shall also show whether or not the coal or other minerals in the land are reserved by the United States, and shall contain *any other* information the *department considers* necessary."

Section 9. Section 81-304, R.C.M. 1947, is amended to read as follows:

"81-304. **Exchange of lands with United States and counties — validation of prior actions.** *(1)* The board *may* enter into contracts or agreements with the United States, or any department thereof having jurisdiction, for the waiving and relinquishment to the United States of any rights of the state in and to sections sixteen *(16)* and thirty-six *(36)* of any township and to any other sections of state lands, provided that the state shall in lieu of the rights so waived and relinquished receive from the United States other lands of equal or greater value.

(2) The board *may* accept on behalf of the state title in fee simple to any land owned by a county in the state, and *may* convey in exchange therefor *state* land of approximately the same area and of a value not higher than the land received from the county *if the* exchange will result in consolidating the *state* lands into more compact bodies.

(3) The current user of the land transferred to the United States *may* continue to enjoy *the* use of *the land under* terms and conditions required by the federal government and in accordance with the Multiple Use Act, and the current user on the land received from the United States *may* continue to utilize the land on the terms and conditions imposed by law or by the board."

Section 10. Section 81-402, R.C.M. 1947, is amended to read as follows:

"81-402. **Lease of state lands — *crop* share rental basis used.** (1) Under the general direction and control of the board of land commissioners, the *department* shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application. *As* to agricultural lands, all leases shall be continued or made upon a crop share rental basis of not less than one-fourth (¼) of the annual crops to the state, or the usual landlord's share prevailing in the district, whichever is greater.

(2) In unusual cases the *department* may authorize a lease upon other basis *than* crop share, but in *these* unusual cases the

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rental shall at least equal the value of the usual landlord's share prevailing in the district, and the *department* shall set forth in the records the unusual conditions of the case and the rental to be charged.

(3) The rental rate for *leasing* all state grazing lands shall be based upon the appraised animal-unit-month carrying capacity of the land as provided in section 81-433. *As* to town and city lots owned by the state, the fair rental value thereof shall be determined from time to time *by* the *department* with the approval of the board and record made thereof, and such town or city property may be leased at its current appraised rental value for terms not to exceed five (5) years.

(4) All leases of agricultural or grazing lands, or town or city lots, shall be upon condition that the board may, in its discretion, offer *the* land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease."

Section 11. Section 81-404, R.C.M. 1947, is amended to read as follows:

"81-404. **Appraisal of grazing lands.** *(1) The department shall appraise* the grazing *lands* owned by the state as to *their* animal-unit-month carrying capacity, and make and preserve *records* thereof in *its* office, and from time to time *re-examine these* lands as to their animal-unit-month carrying capacity so as to keep the records thereof in *its* office reasonably accurate.

(2) In appraising *these* grazing lands the following factors shall be taken into consideration:

(a) Inventory of the forage resources—kind, amount, and location of vegetation.

(b) Accessibility and usability of this forage resource as influenced by topography, availability of stock water, and season of usability.

(c) Condition of soils—the erosion situation.

(d) Other and related resources—such as timber, game animals, need for watershed protection.

(e) Record of needed improvements and facilities—fuel and stock water, revegetation, rodent control, trails, fences, and the like.

(f) Pertinent facts and figures submitted by stockmen living in the area and directors of state grazing districts including the land or in its vicinity.

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(g) Carrying capacity net for similar land in a state grazing district in which the land is situated."

Section 12. Section 81-405, R.C.M. 1947, is amended to read as follows:

"81-405. **Renewal leases—preference right of lessee.** *(1)* A lessee of state land classed as agricultural, grazing, town lot or city lot, who has paid all rentals due from him to the state, and who has not violated the terms of his lease, *is* entitled to have his lease renewed for a five (5) or ten (10) year period at the rental rate provided by law for the renewal period, and subject to any other conditions at the time of the renewal imposed *by law* as terms of *the lease* at any time within thirty (30) days prior to its expiration if no other applications for lease of the land have been received thirty (30) days prior to the expiration of his lease. *If* other applications have been received, the holder of the lease has the perference right to lease the land covered by his former lease *by meeting* the highest bid made by any other applicant. Applications for lease of lands in this section shall be given preference in the order of their receipt at the office of the *department.*

(2) Notwithstanding the foregoing provisions, the board *may* withdraw any agricultural or grazing land from further leasing for such period as the board *determines* to be in the best interest of the state. *Bids* for leases and applications for renewals of leases of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the board at the office of the *department.*"

Section 13. Section 81-406, R.C.M. 1947, is renumbered section 81-421.1, and is amended to read as follows:

"*81-421.1.* **Arbitrators to fix value of improvements—appeal.** If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell *these* improvements to the new lessee, and they are unable to agree on the value thereof, *the* value shall be ascertained and fixed by three (3) arbitrators, one of *whom* shall be appointed by the owner of the improvements, one by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that *the* arbitrators may *fix* shall be paid in equal shares by the owner of the improvements and the new lessee. The value of *the* improvements so ascertained and fixed *is* binding on both parties, however, if either party is dissatisfied with the valuation so fixed, he may within ten (10) days appeal from their decision to the *department which* shall examine *the* improvements, and *its* decision shall be final. The *department* shall charge and collect the

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actual cost of *the* re-examination to the owner and the new lessee in such proportion as in *its* judgment justice may demand. The value of *the* improvements shall be ascertained and fixed as *section 81-421 provides.*"

Section 14. Section 81-407, R.C.M. 1947, is amended to read as follows:

"81-407. **Who may lease—how much and for what length of time.** No *person may* lease state lands, except one who is the head of a family, unless he has attained the age of nineteen (19) years. Any such person and any association, company, or corporation authorized to hold lands under lease may lease state lands, *and may hold more than one (1) lease to state lands,* and there may be included under one *(1)* lease tracts of lands embracing more than one (1) section. No lease to agricultural or grazing lands *may* be for a period other than five (5) or ten (10) years. Leases for city and town lots *may* not exceed five (5) years. When a lease expires or is canceled the *department* shall immediately notify the holder of the lease and all persons who have expressed an interest in leasing the land during, or immediately preceding, the term of *the* expired or canceled lease. If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land which are not issued as a result of competitive bidding, the lessee shall, for the years after *the* increase become effective, pay *the increased* rental, and the terms of grazing leases shall so provide."

Section 15. Section 81-412, R.C.M. 1947, is amended to read as follows:

"81-412. **Rental, when due—cancellation for nonpayment.** The rental for the first year of the lease shall be paid at or before the time of the execution of the lease; however, in the case of leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1, shall be paid and collected at the time of issuing the lease. *If* the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of *the* lease. The rental for each succeeding year on leases *hereafter issued,* with the exception of leases wherein the United States is the lessee, *is* due and payable *before March 1,* and if not paid *by April 1* the lease *is canceled.* The *department* shall notify the lessee by letter addressed to the post-office address given in the lease of *the* cancellation, and the land *is* then open for lease to other applicants."

Section 16. Section 81-413, R.C.M. 1947, is amended to read as follows:

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"81-413. **Land to be leased in compact bodies—inspections to determine best use of land.** All lands *shall* be leased in as compact bodies as possible, and care shall be taken not to separate parts of any section from the section lines or public highways or from any available water supply, or in *a* form *that will* make it more difficult to lease the remaining state lands in the section in which they are located. *If* there are applications or bids for renting certain land for grazing purposes and also applications or bids for renting the same land for agricultural purposes, an inspection of the land shall be made by the *department* at the earliest practical opportunity and *a* determination made, based on *its* findings, of the highest and best use which can be made of the land or portions thereof. *Any* lease of *the* land subsequent to *the* applications or bids shall be such as to return to the state revenue commensurate with *the* highest and best use."

Section 17. Section 81-414, R.C.M. 1947, is amended to read as follows:

"81-414. **Change in terms of lease.** *When* land is leased for grazing purposes, and the lessee desires to cultivate any part of the land, he shall, before doing any such cultivation, make application to the *department* stating how much land he desires to cultivate *and* showing the location in the section of *the* land, and agree that for the remainder of the term of the lease the annual rental shall be at the rate of the original lease until such time as the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease shall be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. *If* any person *cultivates* lands leased for grazing purposes without first *securing* the right to do so *under this section,* the *department shall either cancel the lease,* subject to the appeal procedure provided in section 81-422, or *require the lessee to pay* twice the regular agricultural rental on the land so cultivated in addition to the grazing rental. The provisions of this section shall be incorporated in every lease."

Section 18. Section 81-415, R.C.M. 1947, is amended to read as follows:

"81-415. **Conditions of leases—cancellation for violation of rules.** *(1)* It shall be a condition of all leases of agricultural or grazing state lands, (a) that, in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall handle the leased land with the view of maintaining its productivity and *minimizing* wind and soil erosion and noxious weeds, and *planting* crops with a view of securing the greatest yields of good quality, and (b) that, in the case of

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grazing lands, the lessee shall observe the ordinary rules for good range management and shall manipulate the numbers, class, distribution, and season of the range use and the handling, feeding, breeding, and marketing of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, consistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land lease *may* not be abused by overgrazing.

(2) For the gross violation of any of *these* rules, the lease involved shall be *canceled* by the *department,* subject to the appeal procedure provided in section 81-422."

Section 19. Section 81-416, R.C.M. 1947, is amended to read as follows:

"81-416. **Form of lease—bond.** The general form of lease to state lands shall be prescribed by the board, and no changes in the form for *these* leases *may* be made without the approval of the board. All leases shall be issued in duplicate, one (1) copy shall be mailed to the lessee, and one (1) copy shall be preserved by the *department.* Unless the board decides otherwise, these leases shall be issued without bonds, but the board *may* require a bond and prescribe the form and conditions thereof whenever it *considers* it necessary."

Section 20. Section 81-418, R.C.M. 1947, is amended to read as follows:

"81-418. **Liens on crops and improvements.** The state *has* a lien upon all crops growing upon any of its lands, and upon *the* crops after they have been separated from the lands for any rentals and penalties due or delinquent under the lease on *the* lands, or becoming due during the calendar year in which *the* crops are harvested, for any year or part of *a* year that the land has been held or used by the lessee. *This* lien *applies* to all buildings, structures, fences, and all other improvements, *and is* prior and superior to all other liens, *except* threshermen's liens and seed liens specified in sections 45-701 and 45-801, which have priority, *but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated.* Any person acquiring any of *these* crops or improvements takes *them* subject to *this* lien. *The* department or the sheriff of the county in which the land is located may demand of the lessee payment of the amounts due the state, and if *they* are not paid upon demand, the officer making *the* demand, or the department, may seize *and* sell, either at *a* private

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or public sale, upon giving notice for not less than three (3) days of *the* sale, sufficient of *those* crops or improvements, or of both, to pay the amounts due the state together with costs and expenses of seizure and sale. These provisions relating to liens on crops and improvements shall be embodied in all leases for agricultural and grazing lands and for town, city, or other lots."

Section 21. Section 81-419, R.C.M. 1947, is amended to read as follows:

"81-419. **Assignment of leases—preferences—fee.** Leases to state lands may be assigned on blanks *prescribed* by the *department,* but no assignment *is* binding on the state unless the assignment is filed with the *department,* approved by *it* and payment made of *the assignment* fee *under section 81-108.* Preference shall always be given to the applicant who wants the land for his own individual use, so that the full advantage coming from the leasing and use of *the* lands may reach those who actually till the soil, and so that they *are* not compelled to pay a higher rental than that due the state. If a lessee subleases state lands on terms less advantageous to the sublessee than the terms given by the state, or subleases state lands without filing a copy of the sublease with the *department* and without receiving *its* approval, the *department* shall cancel the lease, subject to the appeal procedure provided in section 81-422."

Section 22. Section 81-421, R.C.M. 1947, is amended to read as follows:

"81-421. **Compensation for improvements.** *(1)* A lessee of state lands *may* place upon the lands a reasonable amount of improvements directly related to conservation of the land or necessary for proper utilization of *it. These* improvements may consist of fences, cultivation, and improvement of the land itself, irrigation ditches, sheds, wells, and reservoirs, and similar improvements. *When* another person becomes the lessee of such lands, he shall pay to the former lessee the reasonable value of *these* improvements at the time the new lessee takes possession. *However,* if any of the improvements consists of breaking (meaning the original plowing of the land), and one (1) year's crops have been raised on the land after the breaking, the compensation for *the* breaking *may* not exceed two dollars and fifty cents ($2.50) per acre, and *if* two (2) or more crops have been raised on the land after the breaking, the breaking shall not be considered as an improvement to the land. *If* the former lessee and the new lessee are unable to agree on the reasonable value of *the* improvements, *the* value shall be ascertained and fixed as provided in *section 81-421.1.*

(2) In determining the value of these improvements, consideration shall be given to *their* original cost, *their* present condition,

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their suitableness for the uses ordinarily made of the lands on which they are located, and to the general state of cultivation of the land, its productive capacity as *affected* by former use, and its condition with reference to *the infestation of* noxious weeds. Consideration shall be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the new lessee. The former lessee may, however, remove the movable improvements on the land *and dispose of them* to parties *other* than the lessee; if he fails to remove *the* improvements from the land within sixty (60) days from the date of the expiration of his lease, all of *the* improvements become the property of the state, unless the *department* for good cause *grants* additional time for *their* removal. Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under section *81-421.1,* or that he has offered to pay the value of *the* improvements as so fixed and determined, or that the former lessee elects to remove the improvements."

Section 23. Section 81-422, R.C.M. 1947, is amended to read as follows:

"81-422. **Cancellation of leases.** *(1)* The *department may* cancel a lease for any of the following causes: fraud, misrepresentation, or concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; using the land for other purposes than those authorized by the lease; and for any other cause which in the judgment of the *department* makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state. Such cancellation *does* not entitle the lessee to any *refund* of rentals paid or exemption from the payment of any rentals, penalties, or other compensation due the state.

(2) When the *department* cancels a lease pursuant to this section or sections 81-414, 81-415, *or* 81-419, *it* shall immediately notify the lessee by certified mail of *the* cancellation and the reasons therefor. The date of cancellation *is* fifteen (15) days from the date *the* notice is received by *the* lessee. The lessee *has* fifteen (15) days after the receipt of *the* notice to file *with the department* a notice of appeal *for a hearing before the board.* If notice of appeal is filed, the lease *remains* in effect until the decision of the board. Within ten (10) days after notice of appeal has been filed, the *department* shall set the time and place of hearing and shall so notify the lessee. The board may, after ten (10) days' notice to the lessee, change the time and place of hearing.

(3) Under rules it *adopts,* the board shall conduct an open

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hearing to determine whether the lease should be reinstated. The burden of proof is on the lessee to show why the lease should not be canceled. If the lease is reinstated, all of the lessee's rights and privileges thereunder shall be preserved; if not, the land shall be open for releasing as provided by law. If the board finds that the terms of the lease have been violated, but in its judgment the violation is not serious enough to warrant cancellation, it may reinstate the lease and assess a penalty up to three (3) times the annual rental against the lessee."

Section 24. Section 81-423, R.C.M. 1947, is amended to read as follows:

"81-423. **Leasing regulations.** The board *may* prescribe rules and regulations relating to the leasing of state lands as it *considers* necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they *are* granted to the state."

Section 25. Section 81-424, R.C.M. 1947, is amended to read as follows:

"81-424. **Lease of *state* land to United States for military purposes authorized.** *The* board, *when* it *considers* it in the public interest, may lease to the United States, for military purposes, any *state* land, whether such land was received by the state through federal land grants, or whether such land consists of so-called "mortgage lands," on such terms and conditions as it *considers* necessary to promote the public welfare and protect the interests of the state; rental shall be payable at the end of each year of *the* lease."

Section 26. Section 81-426, R.C.M. 1947, is amended to read as follows:

"81-426. **Filing with board required.** The pledge of such lease or the mortgage of such leasehold interest shall, within thirty (30) days after receipt of *the* pledge agreement or mortgage, file *it,* or a certified copy thereof, *with the department.*"

Section 27. Section 81-428, R.C.M. 1947, is amended to read as follows:

"81-428. **Proof of termination of lease or pledge to be filed.** The lessee of any grazing or agricultural lease of or leasehold interest in state lands which *is* pledged or mortgaged as provided *in sections 81-425 through 81-431* shall, within thirty (30) days after payment of the indebtedness secured thereby, or within thirty (30) days after the pledge agreement *is* terminated or the leasehold in-

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terest *is* released from the mortgage, file with the *department* proof of *that* fact."

Section 28. Section 81-433, R.C.M. 1947, is amended to read as follows:

"81-433. **Formula for fixing annual rental.** *(1) In* this section:

(a) "Animal unit" means one (1) cow, one *(1)* horse, five *(5)* sheep or five *(5)* goats.

(b) ."Animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one *(1)* animal unit for one (1) month.

(2) The board shall establish the per annum rental rate per section of all grazing lands which are the property of the state upon the animal-unit-month basis as provided *in this section.*

(3) In fixing the minimum annual rental per section, the following formula shall be used:

The base rental shall be computed by multiplying thirty-two cents (32¢) plus two (2) times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(a) The minimum annual rental for grazing lands with an annual carrying capacity of more than fourteen (14) and less than twenty (20) animal units per section is the base rental.

(b) The minimum annual rental for grazing lands with an annual carrying capacity of more than nineteen (19) animal units per section is ten cents (10¢) more than the base rental.

(c) The minimum annual rental for grazing lands with an annual carrying capacity of less than fifteen (15) animal units per section is ten cents (10¢) less than the base rental.

(4) The carrying capacity of the land, to be used in the above formula, shall be in accordance with the determinations of the *department* made *under* section 81-404.

(5) The average price per pound of beef cattle on the farm in Montana shall be taken from statistics published by the United States department of agriculture current at the time of computation of the rental, or from other reliable sources current at such time."

Section 29. Section 81-436, R.C.M. 1947, is amended to read as follows:

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"81-436. **Deposit required with bid for lease—retention or return—forfeiture.** *A person* bidding for the lease of *state* lands shall deposit with the *department,* as evidence of good faith, a certified check, cashier's check, or money order in an amount equal to the annual rental bid in the case of grazing land, and an amount equal to one dollar ($1) per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which *the* bid is made on a crop share basis. The *department* shall retain the deposit of the successful bidder *and apply it* on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder, and return the deposits of the unsuccessful bidders. If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited and deposited by the *department* to the credit of the proper interest and income account in the federal and private revenue fund."

Section 30. Section 81-501, R.C.M. 1947, is amended to read as follows:

"81-501. **Coal mining leases.** *(1)* The state board of land commissioners *may* lease in such manner as it *considers in* the best interests of the state any state lands to which the title *is vested* in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal therein, upon the terms and conditions herein stated, and subject to such rules and regulations as the board *prescribes.* This power *extends* to *state* lands no matter *how* acquired, and *extends* to state lands which have been sold but in which the coal rights *are* reserved by the state, whether *the* lands are under certificate of purchase or patents have been issued; in such cases and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

(2) These coal leases *are* subject to the condition that the coal must be mined, handled, and marketed in *a* manner *that will* prevent as far as possible all waste of coal, and *are* also subject to the condition that the mining operations shall be carried on in *a* systematic and orderly manner *that will* not make subsequent mining operations more difficult or expensive. *A violation* of *any of* these conditions *is grounds* for the forfeiture of the lease, after *a* hearing before the board."

Section 31. Section 81-502, R.C.M. 1947, is amended to read as follows:

"81-502. **Maximum term of lease—form.** No coal mining lease *may* be issued for *more* than twenty (20) years, but the board may

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establish rules for the renewal of a lease at the expiration of the term it *considers* proper and necessary. The board shall prescribe the form of the lease."

Section 32. Section 81-506, R.C.M. 1947, is amended to read as follows:

"81-506. **Improvements of former lessee.** *When* a coal mining lease is applied for on land where mining operations have been carried on by a former lessee, and there are surface or underground improvements on the land used at *the* former operations, disposition shall be made of *the* improvements satisfactory to the board before a new lease is issued. If the owner of such improvement desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree on the value of such improvements, then such value shall be ascertained and fixed as provided in section *81-421.1.*

Before a new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed on between them, or as fixed by the aforesaid officers, or officer, or that he has tendered payment as so fixed, or that the owner desires to remove his improvements."

Section 33. Section 81-508, R.C.M. 1947, is amended to read as follows:

"81-508. **Report and payment of royalty.** On or before the *last* day of each month *every holder of a producing coal mining lease* shall make a report to the *department on a* form *the department prescribes,* showing the number of tons mined during the preceding calendar month, the price obtained therefor at the mine, the total amount of all sales, and *any* additional information required by the *department. The* report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for *the* preceding month as shown by the report."

Section 34. Section 81-510, R.C.M. 1947, is amended to read as follows:

"81-510. **Disposition of royalties and other receipts.** *The department shall credit fees and penalties collected under coal mining leases to the general fund, and rentals, royalties, and bonuses to the permanent fund arising from the grant to which the land under each particular lease belongs."*

Section 35. Section 81-601, R.C.M. 1947, is amended to read as follows:

"81-601. **Definitions.** *In this chapter: (1) "Metalliferous* min-

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erals'' *mean* gold, silver, lead, zinc, copper, platinum, iron, and all other metalic minerals.

(2) "Gems" mean sapphires, rubies, and other stones commonly known as "precious stones" or "semiprecious stones," but *do* not *mean stones* or other earth *materials* commonly used in building or construction work.

(3) "Mining" means the carrying on of operations of any kind for the purpose of extracting from the earth ore and other earth material containing metalliferous minerals or gems, and includes operations of any kind for the extraction from ores and other earth material of metalliferous minerals or gems.

(4) "Mining lease" means a lease issued by the state board of land commissioners for the prospecting for or mining of metalliferous minerals or gems. The term *"Mining lessee"* means the holder of a mining lease whether *the* holder is the original lessee under *the* lease, or holds *the* lease as successor of *the* original lessee.

(5) "Returns" mean the net amount received by the shipper from products of mining operations, after deducting transportation costs and smelting charges and deductions, and other treatment costs, not including as a deduction any cost of producing or treating at the mine.

(6) "Full market value'' means the highest net value of products of mining operations in United States markets, less cost of transportation and refining, not including as a deduction any cost of producing or treating at the mine.''

Section 36. Section 81-602, R.C.M. 1947, is amended to read as follows:

"81-602. **Empowering board to lease, etc.** The board *may,* in its discretion, subject to the other provisions of this *chapter,* lease *state* lands, including the beds of navigable streams and the beds of navigable bodies of water, and the *reserved* mineral rights of the state in lands sold or leased by the state, to *any person, association, or corporation,* for the purpose of prospecting for or mining metalliferous minerals or gems. *These* leases may be for *a period* of time determined by *the* board, subject to limitations contained in the grants by which the state has acquired title to lands or mineral rights so leased."

Section 37. Section 81-603, R.C.M. 1947, is amended to read as follows:

"81-603. **Provisions of leases.** Leases issued under this *chapter* shall give the lessee, so long as he *complies* with the terms and conditions *of the lease,* the exclusive right of possession of the

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lands or mineral rights leased, subject to *any* reservations contained in *the* leases. *A lease* may contain reasonable provisions for preliminary prospecting periods, and shall contain reasonable requirements for the prosecution of work during the prospecting period (if any), and for the prosecution of mining after the prospecting period. *It* may provide for the payment of rentals in conjunction with *the* work requirements, or may prescribe cash rentals as an alternative, or otherwise, as the board *considers* best. *It* shall specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a time limited in *the* lease, remove property placed upon the leased lands by him, in the event of the termination of the lease by forfeiture or by lapse of time. *It* may *also* contain other provisions *the* board and the lessee agree upon, not inconsistent with this *chapter*. *In* short *the* board in making *the* leases *may* exercise business discretion, so long as this *chapter is* not violated. No mining lessee *may*, during any preliminary prospecting period contained in any lease, remove any metalliferous minerals or gems from the leased premises, except as *are* necessary for the proper testing and sampling of *the* lands or mineral rights, and except as *are* permitted by *the* board. The board, by agreement with the permittee or lessee, may, in its discretion and upon such terms as it *considers* best, amend or modify the terms and conditions within the limitations of this *chapter* or extend the term of any lease or prospecting permit issued under this *chapter*, subject to the limitations contained in section 81-802."

Section 38. Section 81-604, R.C.M. 1947, is amended to read as follows:

"81-604. **Royalties—pooling agreements and unit plans of operation.** *(1)* In every *mining* lease the board shall reserve to the state a royalty which shall, together with other considerations to be paid by the mining lessee, constitute the full market value *as ascertained by the board* of the leasehold interest conveyed by *the* lease. *This* royalty *may not be* less than five per cent (5%) of the returns from, or of the full market value of, the metalliferous minerals or gems recovered by the lessee from the state lands or reserved mineral rights covered by *the* lease.

(2) The board may enter into agreements for the pooling of acreage or yardage with others holding the mineral rights in adjoining lands, for unit operation of placer mining and the apportionment of royalties on a cubic yardage or area basis in the case of placer mining deposits lying partly on land in which the state holds the mining rights, and partly on land *in which others hold the mining rights. From* each cleanup of values under such unit operations in which any yardage or area mined on lands to which the state holds the mineral rights is included, the state *is* entitled to

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royalties computed on that proportion of the whole value of recoveries from the cleanup as the yardage or area mined from lands included in the agreement in which the state holds the mining rights, bears to the total yardage or area mined and included in the cleanup. *The* board *may also* enter into agreements for *the* unit operation of such placer mining deposits and the apportionment of royalties upon *any* other equitable basis *the board considers* in the best interest of the state. *The* agreements *may* not change the percentage of royalties to be paid to the state under the unit operations from the percentage fixed in the lease, or to a *smaller* percentage than the *five per cent (5%)* minimum *under this section.*"

Section 39. Section 81-605, R.C.M. 1947, is amended to read as follows:

"81-605. **Quantity of lands.** *A mining* lease shall cover *the* quantity of ground the board *determines* to be reasonable and consistent with the character of the ground, the type of deposit or deposits for which *the* lands *are* to be mined, and the character and size of the operation contemplated, necessary, or reasonable in good mining practice, for the profitable recovery of *the* metalliferous minerals or gems therefrom."

Section 40. Section 81-606, R.C.M. 1947, is amended to read as follows:

"81-606. *Applications. Application for a mining lease shall be made to the department on a form prescribed by it.*"

Section 41. Section 81-607, R.C.M. 1947, is amended to read as follows:

"81-607. **Bonds to state.** The board may, at the time of the execution and delivery of *a* mining lease, or at any time during the life *of the lease,* require *a* mining lessee to file with *the department,* for the benefit of the state, a bond or bonds conditioned to protect the rights of the state, particularly in the payment to the proper officer of *the* state of the royalties reserved in *the* mining lease. *The* bond or bonds *shall* be in *a* form *and amount* prescribed by *the* board. *The* board may at any time require new or additional bonds if, in its discretion, the interests of the state are not adequately protected by the bond or bonds *previously* filed."

Section 42. Section 81-608, R.C.M. 1947, is amended to read as follows:

"81-608. **Bonds to protect lessees, contractees, etc.** *If the* lands at the time of the issuance of a mining lease have been sold, or *are* under contract of sale, or have been leased for agricultural, grazing, or other purposes, the board shall provide against the infringement

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of the rights of *the* prior purchaser, contractee or lessee, and among other things may at any time require the mining lessee to file with *the department* a corporate surety bond in *a* reasonable amount fixed by the board, conditioned to protect the rights of *the* prior purchaser, contractee, or lessee. *The* form of *the* bond *shall* be prescribed by *the* board, *and the* bond shall run to the state for the benefit of *the* prior purchaser, contractee, or lessee. New or additional bonds may be required by the board at any time. Suit may be brought upon *the* bond by any such prior purchaser, contractee, or lessee, for alleged violation of the terms *of the bond* by *the* mining lessee, and such suit shall be brought by *the* claimant in the name of the state for the use and benefit of *the* claimant, and any recovery upon *the* bond shall be paid to the claimant."

Section 43. Section 81-611, R.C.M. 1947, is amended to read as follows:

"81-611. **Examination of lands.** Before *the board leases* any lands for the mining of metalliferous metals or gems, the *department* shall investigate the character of *the* lands and the nature and possible extent of the mineral deposits therein, for the purpose of determining whether *those* lands are of such a character as to warrant the issuance of a mining lease thereon, and for the purpose of determining the amount of royalty and other rentals or considerations for which *the* lands should be leased for mining purposes under this *chapter*. Upon the filing of an application for a mining lease the board may, if the lands covered by *the* application *have not been* examined by the *department,* require the applicant for *the* lease to deposit with the *department* an amount of money, not exceeding five hundred dollars *($500)* in any one case, which, in its judgment, will cover the cost of a special examination, to enable the board to pass upon *the* application in accordance with this *chapter*. Such deposit shall be used to reimburse the state for the actual cost of *the* examination, and any portion of *the* deposit not required for such reimbursement shall, upon the approval or rejection of *the* application, be repaid to the applicant *by the department*. The *department* shall make and preserve complete records of all such examinations."

Section 44. Section 81-612, R.C.M. 1947, is amended to read as follows:

"81-612. **Failure of title.** In issuing mining leases, the board and the state have leased only such right, title, and interest as the state *has* in the lands, metalliferous minerals or gems therein contained. *Neither* the state, *the* board, nor any representative, agent, or employee of the state or *the* board, *are* under any liability *for* the failure of the title of the state, in whole or in part, to the lands, metalliferous minerals, or gems covered by *the* lease."

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Section 45. Section 81-613, R.C.M. 1947, is amended to read as follows:

"81-613. **Assignment of leases or permits.** In case of the assignment of a mining lease or a prospecting permit by the holder thereof, the mining lessee or permitee executing *the* assignment *is* not relieved of any responsibility for operations under *the* lease or prospecting permit until the financial and moral responsibility of the assignee *has* been approved by the board, nor until there *is* deposited with the *department:*

(a) *The* assignment or an executed copy thereof;

(b) An instrument executed by the sureties upon any bonds then held by *the* board in connection with *the* mining lease or permit and then in force, consenting to *the* assignment and containing the agreement of *the* sureties to be bound by *the* bonds under *the* assignment, or new bonds conforming to all the requirements of section 81-607; and

(c) *A* fee *prescribed under section 81-108."*

Section 46. Section 81-614, R.C.M. 1947, is renumbered section 81-2305, and is amended to read as follows:

"81-2305. **Determining title to stream beds, etc.** The board *may* take all proper proceedings for the purpose of determining the title to the beds of lakes and other bodies of water and of streams within the state, and to that end *may* bring or defend suits or other proceedings in court, or before other proper tribunals."

Section 47. Section 81-615, R.C.M. 1947, is renumbered section 81-601.1, and is amended to read as follows:

"81-601.1 **Prospecting permits.** Prospecting permits without lease may be issued by the board upon the payment of *the issuance* fee *under section 81-108. The permittee shall also pay an annual* fee established by the *department and approved by* the board at the end of each year during the life *of the permit. A* permit shall provide for due diligence in the work of prospecting during the life of *the* permit. *A* permit shall be limited to prospecting for metalliferous minerals or gems and no permittee *may* remove from any lands or mineral rights covered by *the* permit any metalliferous minerals or gems except such as *are* necessary for the proper testing and sampling of *the* lands or mineral rights, and except as *are* permitted by *the* board. During the life of any permit the permittee may apply for a lease of the lands or mineral rights covered by *the* permit, and if a lease is granted *it* shall be in the form and subject to all the terms and conditions specified in this *chapter,* as in the case of a mining lease issued under this *chapter. The* permittee *has*

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the preference right to a lease, upon such terms as the board *considers* just, subject to this *chapter,* and in any event *the* permittee *has* preference without competitive bidding, and upon the most favorable terms permitted under this *chapter,* to forty (40) contiguous acres. If some other person *makes* a better bid for a mining lease upon the land covered by *the* permit, and if the board *awards* a mining lease to *a* better bidder, the board shall also require such mining lessee to pay to the permittee, prior to the issuance of *the* lease, the full value of all the work the permittee *has* performed upon the land under his permit in connection with his prospecting and exploration work, and the permittee *may* remove from *the* land, within thirty (30) days from the date the board *gives the* permittee notice of the issuance of *the* mining lease, or within such further time as the board, upon good cause shown, *allows,* any machinery, equipment, improvements, and other property placed thereon by him."

Section 48. Section 81-616, R.C.M. 1947, is amended to read as follows:

"81-616. **Notice to lessees.** Upon the *approval* of an application for a prospecting permit or a mining lease under this *chapter,* the *department* shall promptly give written notice, by ordinary mail, to the *lessee or permittee,* and to *any* holder of an agricultural or grazing lease embracing the same land, or to *any* holder of a certificate of purchase or patent embracing the same land. The notice shall be addressed to *the* permittee, mining lessee, agricultural or grazing lessee, purchaser or patentee at his last known post-office address."

Section 49. Section 81-701, R.C.M. 1947, is amended to read as follows:

"81-701. **The board may issue leases.** *When* there are found upon state lands deposits of stone, limestone, oil shale, clay, bentonite, calsite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, or phosphate, sodium, potash, sulphur, fluorite or barite, or any other nonmetallic minerals, but not including coal, oil, or gas, valuable for building, mining, or other commercial purposes, the state board of land commissioners may, in its discretion, issue to private persons permits or leases for the removal and disposition of *the above named deposits,* upon such terms and conditions as the board may determine. *All* such leases shall be upon a royalty basis calculated upon a gross value by weight or cubic measurement as is most favorable for the particular substance being mined or extracted from the lands. *The* gross value *shall* be determined at the mine or site of operation, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances, or as in the determination of the board *is* fair and

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reasonable. *The* fee for issuing the lease *is* the same as for an oil and gas lease. No such lease shall be made for *a* longer term than ten (10) years, and the board may demand a cash deposit to guarantee the payment of the royalties, or demand a surety bond, or both *a* cash deposit and bond, as the board may determine."

Section 50. Section 81-702, R.C.M. 1947, is amended to read as follows:

"81-702. **Report of lessee and payment and distribution of royalties and other receipts.** On or before the *last* day of each month, *every* holder of a *producing* lease under this *chapter,* shall make a report to the *department of state lands on a* form *the department prescribes,* showing the amount of substances mined or extracted from the lands in the preceding month, the price obtained, the total amount of sales and *any* additional information required. *The report* shall be verified by affidavit of the lessee, or some responsible person having knowledge of the facts, and shall be accompanied by payment of the amount to the state as royalty for the month covered by the report. The royalties, fees, and penalties received under *these* leases shall be credited to the various funds to which they properly belong in the same manner as is now provided for crediting the same under oil and gas leases."

Section 51. Section 81-704, R.C.M. 1947, is amended to read as follows:

"81-704. **Stone, gravel and sand permits for public use.** The board *may* in its discretion, issue permits upon such terms and conditions it *determines,* to the *department of highways,* the board of county commissioners of *any county* of the state, *or* to the governing *body* of *a city* or *town* and of *any* other political *subdivision* of the state, granting them the right to take, remove, and use stone, gravel, or sand from any state lands that have not been sold under certificate of purchase or otherwise for the construction, maintenance, and improvement of public roads, highways, bridges, streets, or alleys. The rights of lessees to the lands on which such stone, gravel, or sand may be located shall be properly safeguarded under the terms of the permits."

Section 52. Section 81-801, R.C.M. 1947, is amended to read as follows:

"81-801. **Sale of state lands to United States—easements for public purposes granted—mineral reservations—land for projects administered by** *the department of natural resources and conservation.* (1) Any *state lands* needed by the United States in the construction of projects for the control of floods, river regulation, conservation of water, irrigation, and reclamation works, or transmission or

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distribution of electric energy, shall, upon application to the board of land commissioners, be sold and conveyed to the United States at the price per acre fixed by the board of appraisers appointed by the United States to appraise and value lands to be included within such projects and needed by the United States in the construction thereof, subject, however, to the approval of the state board of land commissioners and the price limitations of the Enabling Act and the state constitution.

(2) There is granted to the United States over all *state* lands an easement of sufficient width for the purpose desired for right of way for ditches, canals, tunnels, telephone, telegraph, and electric power lines now constructed or to be constructed by the United States in furtherance of the reclamation of arid lands, flood control, river regulation, conservation of water, and transmission and distribution of electric energy.

(3) All conveyances of state lands shall contain a reservation of such rights of way easements. *If the* lands herein granted as rights of way cease to be used for *that* purpose, *they* shall revert to the state, upon notice to that effect being given to the proper authorities.

(4) The mineral reservations now applying to sale of lands received through grants from the United States apply to all lands sold to the United States under this *section,* but all prospecting and exploration for minerals therein, the mining and removal thereof, and all operations carried on in connection therewith, must be carried on in such manner and under such regulations that they will not interfere with the use of the lands for the purposes for which they have been purchased by the United States.

(5) Lands needed by the United States for any of the *previously specified* purposes may be appraised or reappraised without appraising the remaining state lands in the county in which they are located. The lands shall be appraised at their full market value.

(6) The provisions of this *section* governing the sale of state lands to the United States also apply to the sale of state lands for projects financed by the United States under the administration of the *department of natural resources and conservation,* except as to appraisal by the United States."

Section 53. Section 81-802, R.C.M. 1947, is amended to read as follows:

"81-802. **Easements for school sites and grounds and other public uses.** The board *may* grant easements in state lands for schoolhouse sites and grounds, for public parks, community build-

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ings, cemeteries, and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of *those* properties."

Section 54. Section 81-803, R.C.M. 1947, is amended to read as follows:

"81-803. **Easements on state land—application for—action on.** (1) Application for *an* easement on state land must be made to the *department of state lands. It* shall describe the proposed right of way according to survey, show the necessity for the proposed highway or street or other easement, and give *any* additional information the *department requires.* This application shall be accompanied by two *(2)* exact copies of the official plat of the proposed highway, street, or other easement duly verified by the affidavit of the county surveyor or county or city engineer, or other engineer having prepared the same, endorsed thereon. These plats shall show the quantity of land taken by the proposed highway or street or other easement for each *forty (40) acre* tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of *that forty (40) acre* tract or government lot. When deemed necessary by the *department, these* plats shall show all these facts for such smaller subdivisions as the circumstances may render desirable for the state. *However,* when the purpose of the right of way applied for is the transmission or distribution of electric energy, or the construction and operation of pipelines or telephone, telegraph or radio systems, the plats and measurements need not be given, except the description of the location of the center line of the right of way, and the entire right of way may be applied for in one application with only one plat of the entire right of way required. *Easements* granted under this *section include* permission to install and maintain poles, anchors, and other appurtenances necessary for the mechanical support of the transmission or distribution lines.

(2) Upon the filing of *an* application and plats, the *department* shall, whenever *it considers* it necessary, *examine* the proposed right of way *and* report *its* findings to the board. The board shall consider the application and report and take *any* action it *considers* proper, including the fixing of compensation and damages to be paid to the state. The compensation shall be the full market value of the estate or interest disposed of through the granting of *the* right of way easement, and the damages shall be the actual damages resulting to the remaining land as nearly as *they* can be ascertained. If the right of way is granted according to the plat, *the* plat shall become the official plat thereof, and shall be retained in the office of the *department.* The board shall *issue* right of way

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deeds for all such easements that it *grants,* upon full payment being made.

(3) If the state land over or through which *a* right of way is applied for is under certificate of purchase or sales contract, the purchaser, or his assignee, must be made a party to the proceedings, and his consent in writing to the laying out and establishment of the proposed highway, street, or other easement, and to the amount of compensation and damages to be paid, must be filed with the board before *the* right of way *is* granted. The board *is* the judge of how much compensation and damages shall be paid to the state and applied on the certificate of purchase or sales contract and of how much, if any, shall be paid to the purchaser, as the circumstances in each individual case warrant. *This subsection applies* to all grants of rights of way on state lands."

Section 55. Section 81-901, R.C.M. 1947, is amended to read as follows:

"81-901. **Certain state lands not subject to sale.** Lands classified as timberlands *are* not subject to sale, but timber thereon may be sold and disposed of in the manner provided by law. Lands which in the judgment of the board *of land commissioners* are likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits, *are* not subject to sale, either the surface land or any of such deposits therein. *However,* this *does* not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials."

Section 56. Section 81-902, R.C.M. 1947, is amended to read as follows:

"81-902. **Mineral reservations in state lands.** All coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits, except sand, gravel, building stone, and brick clay, in *state* lands, which *were* not reserved by the United States *before July 1, 1927,* are reserved to the state. All *those* deposits are reserved from sale except upon a rental and royality basis as provided by law. *A* purchaser of *state* lands *acquires* no right, title, or interest in or to any of *those* deposits. The state also reserves for itself and its lessees the right to enter upon *these lands* to prospect for, develop, mine, and remove *those* deposits and to occupy and use so much of the surface of the lands as may be required for all purposes reasonably extending to the exploring for, mining, and removal of *the* deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof."

Section 57. Section 81-910, R.C.M. 1947, is amended to read as follows:

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"81-910. **Notice of sale.** *(1)* The *department* shall *give* notice of *each* sale by publication in a *newspaper of general circulation in* the county where the sale is to be held, once each week through *the* four *(4)* consecutive weeks preceding the date of sale. *The* notice shall give the day, date, and time of the beginning of the sale, *and* contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing *them* with reference to section number and subdivision of the section, or with reference to block and lot if surveyed, the number of acres in unplatted lands, and the appraised value per acre and the appraised value of each lot. As a general rule nonirrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one (1) section.

(2) For the convenience of the bidders, the *department* may assign *to* the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

(3) The notice shall also give the terms and conditions of sale, and *any* additional information the *department considers* useful."

Section 58. Section 81-912, R.C.M. 1947, is amended to read as follows:

"81-912. **Regulations concerning sale—forfeiture for nonpayment—disposition of proceeds.** *(1)* At the time fixed for the sale, the lands shall be offered for sale at auction in the order they appear in the notice of sale, *and* under the direction of the *department the lands shall be* sold to the highest qualified bidder under the following restrictions:

(a) No lands *may* be sold for less than the appraised value;

(b) Tillable lands capable of producing agricultural crops *may* not be sold for less than ten dollars *($10)* per acre;

(c) Lands principally valuable for grazing purposes *may* not be sold for less than five dollars *($5)* per acre.

(2) The lessee of the land need not make a higher bid than others, but *he* shall, if bidding an equal amount, be given the preference. The lands shall be sold as nearly as practicable according to the subdivisions in which they are advertised, and care shall be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways. The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

(3) If any successful bidder at *a* sale refuses or neglects to make the initial payment required to be made on the land purchased

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by him, he shall forfeit to the state not less than fifty dollars *($50)* nor more than one thousand dollars *($1,000)* to be determined by the board according to the circumstances of the case. If such forfeiture is not paid when notice of the amount of the forfeiture has been served by the *department,* the attorney general shall *sue* for the recovery thereof in the name of the state.

(4) The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an inseparable and inviolable part thereof. All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law."

Section 59. Section 81-915, R.C.M. 1947, is amended to read as follows:

"81-915. **Terms of payment.** *(1)* Every purchaser of state land shall pay on the day of sale *that* portion of the purchase price as he may desire, but in no case less than ten *per cent* (10%) of the total sales price, and in case the balance on the purchase price is not an exact multiple of twenty-five dollars ($25), then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of twenty-five dollars ($25).

(2) The balance of the purchase price shall draw interest at the rate of five *per cent* (5%) per annum, payable annually, and the balance of the purchase price itself shall be payable through a period of thirty-three (33) years on the amortization plan. *This plan* is defined as being that plan under which part of the prinicpal is required to be paid each time interest becomes due and payable, and under which this part payment on the pricipal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full. *However,* the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments. *The* balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of twenty (20) years, *but* the board may at any time fix a shorter period than twenty (20) years for the payment of *the* balance on town and city lots, and different periods of time may be established for different towns and cities as the best *interests* of the state demand."

Section 60. Section 81-917, R.C.M. 1947, is amended to read as follows:

"81-917. **Lien on improvements and crops for principal, interest, penalty interest and taxes.** The state *has* a lien prior and

superior to all other liens, *except* threshermen's liens and seed liens as specified in sections 45-701 and 45-801, which have priority, *but only for the aggregate amount of the indebtedness then existing, including any advances therefore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. This lien is* upon all buildings, structures, fences, and all other improvements upon the lands so sold and upon all crops growing upon any of these lands, and also upon such crops after they have been separated from the lands, for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and *this* lien is hereby expressly reserved. Any person purchasing or otherwise acquiring *the* improvements or crops or any part thereof, takes *them* subject to *the* lien. Any representative of the department or sheriff of the county in which the land is located, or his deputy, may demand of the purchaser or his agent payment of the amounts due the state, and if *they* are not paid upon demand, the officer making *the* demand, or any representative of the department, may *immediately* seize *the* improvements and crops, and upon giving three *(3)* days' notice, sell and dispose of, either at private or public sale, sufficient of the crops or improvements or of both to pay the amounts due the state, together with cost and expenses of seizure and sale."

Section 61. Section 81-919, R.C.M. 1947, is amended to read as follows:

"81-919. **Settlement for improvements.** *If* any state land *is* sold on which there are improvements belonging to a lessee, and some *person other* than *the* lessee *is the purchaser, that person* shall *settle* with *the* lessee for all improvements on the land belonging to the lessee before the *issuance* of the certificate of purchase. *The* provisions of *sections 81-421 and 81-421.1* relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the purchaser. If settlement is not reached within six (6) months of date of sale, all improvements become *the* property of the state unless the *department* for good cause shown grants both parties additional time in which to exhaust arbitration."

Section 62. Section 81-921, R.C.M. 1947, is amended to read as follows:

"81-921. **Certificate of purchase.** *(1)* Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the *department* shall execute and mail to the purchaser a certificate of

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purchase signed by the governor as president of the board and by the commissioner *of state lands* and attested by the seal of the board. *The* certificate of purchase shall contain the date of sale, the name and post-office address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of principal and interest to the time of maturity. The certificate shall reserve the easements for rights of way granted by the statutes in favor of the United States and other easements that may have been granted by the board and shall contain the reservations in favor of the state provided for in *section 81-902* relating to coal, oil, and mineral rights in the land.

(2) The certificate shall also contain information in regard to the lien of the state on crops and improvements on the land for installments of principal and interest and taxes, and *any* additional conditions, agreements, and information the board *considers* necessary in order to carry out the intent of this act."

Section 63. Section 81-923, R.C.M. 1947, is amended to read as follows:

"81-923. **Payments of installments.** The *department is* not required to accept fractional payments of the installments on certificate of purchase, on account of the complications arising from the division of payments. The purchaser may make payment of one *(1)* or more installments before the same *becomes* due, but unless such payments are made at least six (6) months before the installments become due, no reduction *may* be made in the interest payments. *If* installments on principal and interest are paid more than six (6) months prior to the due date, the interest from the date of such payment shall be figured upon the balance of the principal unpaid after *the* advance payment has been made up to the date on which it comes due. If for any reason any installment is not paid when due, the total of *that* installment, including payment on the principal and payment on interest, shall draw penalty interest at the rate of six *per cent* (6%) per annum from the date due until the date actually paid. Payment may be made in full at any time before maturity by paying the balance on the principal and interest accrued up to the date of such payment."

Section 64. Section 81-924, R.C.M. 1947, is amended to read as follows:

"81-924. **Default in payment of purchase price — cancellation of certificate.** *If* any purchaser *or assignee* of state land *defaults* for a period of thirty (30) days or more in the payment of any of the installments due on his certificate of purchase, the certificate *is* subject to cancellation. *The department* shall *mail* to him at his last

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known post-office address a notice of default and pending cancellation. *The* notice shall give him sixty (60) additional days from the date of mailing *the* notice in which to make payment of the delinquent installment or installments with penalty interest. If he fails to make *the* payment within *sixty (60) days,* the certificate of purchase shall from that date and without further notice be void, the duplicate of the certificate in the office of the *department* shall be canceled, and the land under the certificate shall revert to and become the property of the state to the same extent as other state lands, and shall be open to lease and sale. *All* buildings, fences, and other improvements placed thereon subsequent to the date of execution of *the* certificate of purchase shall be and remain the property of the purchaser named in *the* certificate of purchase or of his heirs, assigns, or devisees, and may be removed from *the* land at any time within ninety (90) days after the date of *the* cancellation. If *the* buildings, fences, and other improvements *are* not removed prior to the expiration of *the* ninety (90) day period, they become the property of the state. In case of cancellation of certificate of purchase or surrender of certificate of purchase, and where the land is again open to lease, the former lessee *has* the prior right to lease the tract at the existing rate, or at the rate set by competitive bidding if such occurs."

Section 65. Section 81-926, R.C.M. 1947, is amended to read as follows:

"81-926. **Certificates may be assigned.** Certificates of purchase may be assigned to a citizen of the United States, or to a person who has declared his intention to become *a* citizen, or to a corporation organized under the laws of *this* state. Such assignments shall be made on forms prescribed by the *department,* shall be duly acknowledged as other conveyances of real estate, and shall be executed in duplicate, one (1) copy to be filed and retained in the office of the *department,* and one (1) copy to be retained by the assignee. A person *is* not qualified to receive *an* assignment if the lands he has already purchased from the state together with the lands included in the assignment exceed one (1) section; the assignee must in all respects possess the same qualifications as an original purchaser."

Section 66. Section 81-927, R.C.M. 1947, is amended to read as follows:

"81-927. **Lost certificate.** *If a* certificate of purchase to state lands *is* lost or is wrongfully withheld by any person from the owner thereof, the rightful owner may *apply* to the board for *the issuance* of a *substitute* certificate. This application shall be accompanied by an affidavit from the owner of the certificate setting forth the facts in regard to the loss or unlawful withholding of the certificate, and

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by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in his office affecting the title to the land under the certificate. The board shall *issue* a *substitute* certificate of purchase to the applicant if in the judgment of the board the facts warrant *its* issue."

Section 67. Section 81-928, R.C.M. 1947, is amended to read as follows:

"81-928. **Land subject to taxation.** *(1)* State lands purchased from the state *are* subject to taxation to the full value thereof. The assessor shall assess the purchaser for the full value of the land on the first Monday of March following the date of purchase. *The* holder of certificates of purchase to lands within irrigation districts *is* liable for the entire tax levied against the land thereunder on account of such irrigation district.

(2) The improvements on the land shall be assessed and taxed as other improvements on farm lands.

(3) On or before March *15* of each year, the *department* shall furnish the county assessor of each county with a complete list of all state lands sold in his county during the year ending on the first Monday of March of each year. This list shall show the name and address of the purchaser, the legal description of the land, and the acreage contained therein."

Section 68. Section 81-930, R.C.M. 1947, is amended to read as follows:

"81-930. **Lands reverting to state — procedure.** *If* any lands sold under this *title* revert to the state for any *reason,* the *department* shall notify the assessor and the county treasurer of the county in which the land is situated *of that fact. Upon* the receipt of *the* notice, the assessor *shall* cancel any assessment of *the* land for that year, and the county treasurer *shall* cancel all *tax liens* against the land."

Section 69. Section 81-932, R.C.M. 1947, is amended to read as follows:

"81-932. **Patents, how executed.** *(1)* The governor, and in his absence or inability, the lieutenant governor, shall execute *deeds* or *patents* of conveyance transferring without covenants any lands sold by the board under the laws of this state when full payment has been made therefor. Such deed or patent shall contain the reservation of easements for rights of way to the United States, reservation of all minerals in the land as provided in *section 81-902,* and all other reservations to which the particular land conveyed *is* subject. *If* the land is located within the boundaries of a federal

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irrigation project, the patent shall contain a lien clause substantially in the following form: "The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project." *The* deed or patent shall be attested by the secretary of state, countersigned by the commissioner *of state lands,* and have the great seal of the state and the seal of the board thereto attached, but need not be acknowledged. A certified copy of the record of any such deed or patent shall be received in evidence in all courts of record of this state the same as the original

(2) This section *does* not require any reservation in a patent which was not an express or implied reservation in the certificate of purchase pursuant to which the patent is issued; the statutes in effect when such certificate of purchase was issued must govern."

Section 70. Section 81-1101, R.C.M. 1947, is amended to read as follows:

"81-1101. **Acceptance of federal land grants.** *The* state board of land commissioners *may* accept any grant of lands from the United States to the state made in carrying out the provisions of the Enabling Act and also any other grant for any special purpose that may be made by the United States to the state. Any acceptance by the board on behalf of the state, that has taken place prior to *July 1, 1927,* of lands granted by the United States to the state is hereby ratified."

Section 71. Section 81-1101.1, R.C.M. 1947, is amended to read as follows:

"81-1101.1. **Board may accept federal facilities and installations — title in state.** The board *may* on behalf of the state accept donations of federal installations, facilities, lands, or properties. All title to the installations or facilities shall be vested in the name of the state for its use. *This section does* not limit, reduce, or supersede sections 82-3101 through 82-3104."

Section 72. Section 81-1103, R.C.M. 1947, is amended to read as follows:

"81-1103. **Donations of land for forestry purposes.** *The* board *may* accept gifts, donations, or contributions of land suitable for forestry or park purposes, and enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the board are desirable for state forests."

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Section 73. Section 81-1108, R.C.M. 1947, is renumbered section 81-106, and is amended to read as follows:

"*81-106.* **Board to correct errors.** The board *shall correct* errors, mistakes, and misdescriptions in deeds and conveyances of property to the state. *Deeds* or other conveyances shall be made and executed in the manner provided for the execution of patents by the state. The board *may also correct* errors in leases, certificates of purchase, patents, and other conveyances of property from the state, upon satisfactory proof that an error or mistake has been made."

Section 74. Section 81-1109, R.C.M. 1947, is renumbered section 81-107, and is amended to read as follows:

"*81-107.* **Money paid by mistake to be refunded.** If any money *is* erroneously paid to the state on any permit, lease, certificate of purchase, patent, loan, or in any other transaction, *the department shall refund that money* to the person entitled *to it* from the proper fund."

Section 75. Section 81-1110, R.C.M. 1947, is amended to read as follows:

"81-1110. **Who may not buy or lease state lands.** It *is* unlawful for any member of the board, or any person appraising lands, or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber thereon, or of any person connected with the *department of state lands* as an officer or employee, to purchase or lease, directly or indirectly, any of the land of the state or any timber thereon."

Section 76. Section 81-1113, R.C.M. 1947, is renumbered section 81-108, and is amended to read as follows:

"*81-108. Fees. The department may prescribe fees, with the approval of the board, for the issuance, filing, or making of a copy of any instrument or for any other service.*"

Section 77. Section 81-1115, R.C.M. 1947, is amended to read as follows:

"81-1115. **State land equalization payments to counties—list of lands transmitted to county assessor.** The *department* shall, before the first Monday of April of every year, prepare and transmit a statement to the county assessor of each county *in which* the state has real property in excess of six per cent (6%) of the total land area of the county and from which the state derives grazing, agricultural or forest income. The statement shall contain the total number of acres owned by the state in that county and list the acres separately as grazing, agricultural, or forest land."

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Section 78. Section 81-1117, R.C.M. 1947, is amended to read as follows:

"81-1117. **Form to be completed by county assessor—method of computation shown.** The *department* shall provide a form to be followed and completed by the county assessor. The county assessor shall, before *October 1,* make the computations required and submit to the *department* the completed form which shall show the computations and method used in arriving at the state land equalization payment."

Section 79. Section 81-1118, R.C.M. 1947, is amended to read as follows:

"81-1118. **County statement on equalization payments examined by** *department*—**claim filed with** *department of administration.* The *department* shall examine the statement returned by the county assessor for accuracy, and in no case shall the state land equalization payment be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The *department* shall, before November 1 of each year, prepare and file a claim with the *department of administration* for all counties who are eligible for state land equalization payments, and this claim shall show the amount of money each eligible county will receive."

Section 80. Section 81-1119, R.C.M. 1947, is amended to read as follows:

"81-1119. **Warrant for state land equalization payments to counties.** The *department of administration* shall, before *December 1,* approve and authorize the issuance of a warrant on the general fund of the state made payable to the county treasurer of the counties shown on the claim for the payment of the state land equalization payment."

Section 81. Section 81-1121, R.C.M. 1947, is amended to read as follows:

"81-1121. **School district use of state land equalization proceeds.** The money received by any school district under *sections 81-1115 through 81-1120* shall be designated as district money for the general maintenance and operation of the elementary schools of the district. Such money may be used by the district as all other cash balances are used, in accordance with the provisions of section 75-6915."

Section 82. Section 81-1601, R.C.M. 1947, is amended to read as follows:

"81-1601. **Sale of timber—fees for brush disposal and timber**

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stand improvement. *(1)* The state board of land commissioners *may* sell timber on state lands, at such price per thousand feet as in its judgment *is in* the best interest of the state, but not otherwise; but no such sale of live timber shall be less than three dollars *($3)* per thousand feet for white pine, yellow pine, and spruce *or* less than one dollar and a half ($1.50) per thousand feet for all other timber species. All timber sold or cut from state lands shall be cut and removed under such rules and regulations for the preservation of standing timber and the prevention of fires as the board *prescribes;* in all cases the board must require the person cutting the timber to pile and burn or otherwise dispose of the brush and slashings in such manner as may be required. Before any sale *is* granted, the timber shall be estimated and appraised under the direction of the *department of natural resources and conservation,* upon the request and subject to the approval of the board. *These* estimates and appraisals shall show as nearly as *possible* the amount and values per thousand feet of all merchantable timber, together with a statement of the situation of the timber relative to risk from fires or damage of any kind, its distance from the nearest lake, stream or railroad, and its value and position as a protection to a watershed.

(2) The board may set fees for brush disposal on state lands. The board may also establish a fee for timber stand improvement on timber cut on state lands. Such fees shall be deposited in the earmarked revenue fund to the credit of the *department of natural resources and conservation."*

Section 83. Section 81-1604, R.C.M. 1947, is amended to read as follows:

"81-1604. **State brand—penalty for violation.** The *department of natural resources and conservation,* under the direction of the board, shall select and designate a brand which *it* shall place upon all timber, logs, boards, or planks that may be seized, as provided for in this *chapter.* Any person, or any officer or employee of any company, association, or corporation, who *removes, sells, or disposes* of any property mentioned in this *chapter,* after the *property* has been seized or marked with the state brand, or who *erases, defaces, cuts, or destroys* any mark upon any such property, shall, upon conviction, be imprisoned in the state prison for not less than one *(1)* year nor more than three *(3)* years, and be subject to a fine of not less than five hundred dollars *($500)* nor more than five thousand dollars *($5,000)."*

Section 84. Section 81-1702, R.C.M. 1947, is amended to read as follows:

"81-1702. **Area to be leased — limitations — term of leases —**

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operating agreements. (1) *An* oil or gas lease issued on state lands *may not* embrace more than six hundred forty (640) acres, except that any section surveyed by the United States *which* contains more than six hundred forty (640) acres may be included under one *(1)* lease. Any person, association, corporation, or municipality qualified to hold an oil or gas lease on state lands may receive from the board or take through assignment, or succession, will, judgment, decree, or otherwise through the operation of law, more than one *(1)* oil and gas lease to state lands, subject to such regulations and limitations as the board *prescribes.*

(2) All *state oil and gas* leases shall be granted for a primary term or period of ten (10) years, and as long thereafter as oil or gas in paying quantities *is* produced, *on condition* that all drilling, rental, and other obligations are fully kept and performed by the lessee; nothing *in this section amends* or *repeals* sections 81-1703 or 81-1706.

If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease, but the owner of the lease is then engaged in drilling on *the* premises for oil or gas, then the lease *continues* in force so long as such drilling operations are being diligently prosecuted. If oil or gas *is* recovered from any such well drilled or being drilled at or after the expiration of the primary term of the lease, the lease *continues* in force so long as oil or gas in paying quantities *is* produced from the leased premises.

(3) Owners of state oil and gas leases may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on the state lands under their leases; but no such operating agreements *are* in any way binding upon the state until filed with the board and approved by *it;* and no such drilling or operating agreement in any way *affects* the obligations of each individual leaseholder to the state.

(4) Nothing contained *in this section* or in prior related acts *prevents* the board from entering into agreements for the pooling of acreage with others for unit operations for the production of oil or gas, or both, and the apportionment of oil or gas royalties, or both, on an acreage or other equitable basis, and from modifying leases with respect to delay rentals, delay drilling penalties and royalties in accordance with such pooling agreements and such unit plans of operation; however, such agreements *may* not change the percentage of royalties to be paid to the state from the precentages as fixed in its leases. The board *may* modify existing pooling and unit agreements so as to commit the state lands included therein for as long as the unitized substance or substances for which the state lands are committed is produced from any lands in the unit.

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(5) Oil or gas produced from any part of a unit in which state lands are included by virtue of a pooling agreement, *are considered* to be produced from the state lands therein, within the meaning of this *chapter.*"

Section 85. Section 81-1702.1, R.C.M. 1947, is amended to read as follows:

"81-1702.1. **Rentals — filing fee — contiguity.** *(1) The minimum annual money rentals to be paid to the state for oil and gas leases issued before March 3, 1955, shall be seventy-five cents ($.75) for each acre of land leased; however, this rental shall in no case be less than fifty dollars ($50) a year.*

(2) The annual money rentals to be paid to the state for oil and gas leases *issued on and after March 3, 1955,* shall be one dollar ($1) for each acre of land leased, except that in addition to *the* sum of one dollar ($1) per acre, the rental for the first year of the lease shall also include any sum in excess of one dollar ($1) per acre offered and accepted for *the* first year's rental; however, *this* rental shall in no case be less than fifty dollars ($50) *a year.*

(3) The first year's rental shall be paid before the *issuance* of the lease. The rentals for each subsequent year of the lease shall be due and payable thirty (30) days before the beginning of such subsequent year, and upon failure to make such payment *the* lease *terminates.*

(4) The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit. No lease *may* embrace noncontiguous subdivisions of lands unless *the* subdivisions *are* within an area comprising not more than one (1) square mile.

(5) In all cases where an oil and gas lease issued *after March 3, 1955,* is surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease *may* be issued within thirty (30) days from the date of cancellation or relinquishing. This restriction *does* not apply, however, in cases of bona fide assignment."

Section 86. Section 81-1702.2, R.C.M. 1947, is amended to read as follows:

"81-1702.2. **Power to terminate lease — grounds.** In every oil and gas lease granted *after March 3, 1955,* under this chapter there shall be reserved *to* the board full power to declare termination of the lease at the end of the second year or any subsequent year of the primary term of the lease upon failure of *the* lessee to either (a)

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commence the drilling of a well for oil and gas upon the leased premises or (b) pay a delay drilling penalty as follows: for the sixth year of *the* lease one dollar and twenty-five cents ($1.25) per acre per year, and for the remainder of the primary term of the lease *an* amount per acre per year as *the* board may, in its discretion, determine. *Notice* of *that* determination shall be given to the lessee, and if the lessee *applies* for a hearing thereon within ten (10) days after receipt of *the* notice, the determination shall become final only after such hearing has been held. *This* annual delay drilling penalty *shall* be paid each year in advance. *If* a well for oil and gas is commenced, the drilling of *the* well shall be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas. *If* the first well drilled *is* a dry hole, and if a second well is not commenced on the land covered by the lease before the next anniversary of the lease following the completion of *the* well, *the* lease may be terminated by the board unless the lessee, on or before such anniversary, *resumes* the payments of penalties in the amounts provided *in this section. Upon* the resumption of the payment of such delay drilling penalties and their continued payment, *the* lease *continues* in force during the primary term as though there had been no interruption in *the* delay drilling penalty payments."

Section 87. Section 81-1705, R.C.M. 1947, is amended to read as follows:

"81-1705. **Report of lessees.** On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the *department* for the preceding calendar month *on a* form the *department prescribes. The* report shall show the amount of oil or gas produced and saved during *the* preceding month, the price obtained, the total amount of all sales, and *any* additional information as may be required, and *it* shall be signed by the lessee or some responsible person having knowledge thereof. *The report* shall be accompanied by payment of the amount due the state as royalty for the month covered by the report, unless the state's royalty is being or has been paid direct by the purchaser thereof*; however,* where the amount of royalty due from any lease is determined by the board to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semiannually."

Section 88. Section 81-1706, R.C.M. 1947, is amended to read as follows:

"81-1706. **Work required to hold lease — extension of time — modification of existing leases.** *(1)* In every oil and gas lease granted by the state there shall be reserved *to* the board full power

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to declare termination of the *lease* upon failure of the lessee to drill at least one well upon the leased premises *(*not less than six (6) inches in diameter to the depth of at least one thousand (1,000) feet, unless oil or gas in commercial quantity and of commercial quality shall be encountered at a shallower depth*)* within two *(2)* years after the date of the lease. *If* oil or gas in commercial quantities is not found at the depth of one thousand (1,000) feet or less, the lessee shall continue drilling with diligence to such depth as necessary to make reasonable test for oil or gas. The board may, in its discretion, upon satisfactory showing by the lessee, extend the time for the commencement or completion of such drilling obligation from year to year, not exceeding ten (10) years after the date of the lease, upon such terms and considerations the board *determines,* and upon payment to the *department* of such penalty, if any, the board in its discretion *determines,* for each year beginning with the third year, payable each year in advance.

(2) This section does not apply to leases issued after March 2, 1955."

Section 89. Section 81-1712, R.C.M. 1947, is amended to read as follows:

"81-1712. **Disposition of royalties and other moneys.** All fees, rentals, penalties, royalties, and bonuses collected for or under *state oil and gas* leases shall be paid to the *department* and credited as follows: All fees and penalties shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the lands under each lease belong; all moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and forever remain an inseparable and inviolable part thereof. *However,* all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income the same as all other receipts from such lands. *All* moneys received as rentals, royalties, and bonuses for or under leases on *state* lands and not held in trust for the public schools of the state, or for any state institution, shall be credited, one-half *(1/2)* to the state general fund and one-half *(1/2)* to the state permanent revenue fund."

Section 90. Section 81-1716, R.C.M. 1947, is amended to read as follows:

"81-1716. **Assignments of leases.** The assignment of any oil and gas lease issued under this *chapter,* either in whole or as to subdivisions of land embracing not less than forty *(40)* acres covered thereby, made to an assignee qualified as provided herein, *is* permitted. Such assignment *is* not, however, binding upon the state until

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filed *with* the *department and* accompanied by the required fees, together with such proof of qualifications required by the board, and approved by *the* board or its lawful representative. *The* approval of any assignment so filed and supported *may* not be withheld in any case where the rights or interest of the state in the property assigned will not in the judgment of the board be prejudiced thereby, and the decision of the board in all cases *is* subject to appeal upon proper court proceedings. All other assignments of oil and gas leases issued under this *chapter* or interests therein *are* subject to approval by the board and *are* binding upon the state in the discretion of *the* board."

Section 91. Section 81-1717, R.C.M. 1947, is amended to read as follows:

"81-1717. **Removal of property of lessee at end of term—agreement with new lessee concerning property.** (1) Upon the termination for any cause of any lease issued *under* this *chapter,* the former lessee *has* six (6) months after the date of *the* termination to remove all machinery, fixtures, improvements, buildings and equipment belonging to him *on the* premises, except *for* casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells. *As* to such casing, equipment, and apparatus, any succeeding lessee, or in the event there *is* no succeeding lessee, the state, wishing to have such property left upon the premises, shall pay the reasonable value thereof to the former lessee. *If* the succeeding lessee or the board is unable to agree with the former lessee upon the reasonable cash value of such casing, equipment, and apparatus, the succeeding lessee or the state, as the case may be, shall pay in cash to the former lessee *a* sum fixed as a reasonable price by a board of three *(3)* appraisors, one *(1)* of whom shall be chosen by the successful bidder, one *(1)* by the former lessee, and the third by the two *(2)* so chosen. *Its* appraisal shall be reported to the respective parties in writing, and *is* final and conclusive.

(2) The former lessee may remain in possession and manage the land and property formerly covered by his lease until the value of *the* casing, equipment, and apparatus which *the* succeeding lessee or the state *desires* to have left upon *the* premises, is fixed, in the manner provided *in this section,* and *has* been paid to him in cash. *During the* time *the* former lessee remains in such possession, he *may* retain the same share of the products of the premises as inured to him during the term of his lease. Should the state or other bidder not desire any of *the* lessee's property as provided in this *section,* the lessee shall properly plug all wells and remove all of *his* property from *the* lands."

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Section 92. Section 81-1718, R.C.M. 1947, is amended to read as follows:

"81-1718. **Surrender of lease.** The lessee under any oil and gas lease granted by the state *may* at the termination of any rental year, by giving to the *department* 30 days' previous notice in writing, surrender and relinquish *the* lease to the state in whole or as to any legal subdivision of the lands covered thereby and be discharged from any obligation not *yet* accrued as to lands so surrendered and relinquished, without prejudice to the continuance of the lease as to lands not surrendered or relinquished."

Section 93. Section 81-1720, R.C.M. 1947, is amended to read as follows:

"81-1720. **State officers not to be interested in leases.** It *is* unlawful for any *officer or employee of any agency* of *the executive department of state* government *who* is required to inspect or examine oil or gas wells or otherwise to gather field information in regard to prospecting for oil and gas or the production thereof, to lease or to become interested in any manner in any oil or gas lease on state lands."

Section 94. Section 81-1726, R.C.M. 1947, is amended to read as follows:

"81-1726. **Term of lease — renewal.** All leases issued *under section 81-1725* may be granted for a period not exceeding twenty (20) years, *and* the lessee *has* a preferential right to renew *the* lease for an additional period not exceeding twenty (20) years subject to *any* terms and conditions the board *imposes.*"

Section 95. Section 81-1728, R.C.M. 1947, is amended to read as follows:

"81-1728. **Bond of lessees.** *A lessee under section 81-1725* shall furnish bond to the state in *a form* prescribed by the board and in *an* amount adequate to indemnify the state against loss, damage, or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease. *No* bond in excess of twenty thousand dollars *($20,000) is* required under any one *(1)* lease."

Section 96. Section 81-1729, R.C.M. 1947, is amended to read as follows:

"81-1729. **Cancellation and forfeiture of lease—notice—hearings.** All leases granted *under section 81-1725* shall provide for *their* forfeiture and cancellation upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the *department* and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice

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concerning which the lessee is in default. The board *may* order and hold hearings on any matter or question involving leases issued under *section 81-1725,* under such rules and regulations as it *adopts;* any lessee, upon application, *is entitled to* a hearing on any notice or demand of the *department* before any lease is granted, forfeited, or canceled by *the* board."

Section 97. Section 81-1730, R.C.M. 1947, is amended to read as follows:

"81-1730. **Rentals — disposition of funds.** All rentals collected for or under leases issued under *section 81-1725* shall be paid to the *department* and credited in the same manner as rentals from oil and gas leases."

Section 98. Section 81-1731, R.C.M. 1947, is amended to read as follows:

"81-1731. **Termination and surrender of lease.** *(1) The* lessee *may,* at the termination of any rental year, by giving to the *department* thirty (30) days' previous notice in writing, surrender and relinquish such lease to the state and be thereupon discharged from any obligation not *yet* accrued.

(2) Upon the termination for any cause of any lease issued *under section 81-1725,* the lessee *has* six (6) months after the date of *the* termination within which to remove all machinery, fixtures, improvements, buildings, and equipment belonging to it upon *the* premises."

Section 99. Section 81-2201, R.C.M. 1947, is amended to read as follows:

"81-2201. **Exchange of timbered, cut over or burned over lands.** *The* board of land commissioners *may* accept on behalf of the state title in fee simple to any lands, timbered or from which the timber has been cut or burned, and in exchange therefor may convey not to exceed an equal value of similar *state* land. *However,* no such exchange *may* be made except that which in the opinion of the board will benefit the public interest. *For* the purpose of such *an* exchange, all *state* lands, including those referred to in section 81-1401 and section 81-903, are subject to be offered for such exchange, and any restrictions against their sale or disposal are, for the purpose of such *an* exchange, released."

Section 100. Section 81-2202, R.C.M. 1947, is amended to read as follows:

"81-2202. *Department of natural resources and conservation* **to investigate.** *When* a proposal for *an* exchange is made, and the owners of the respective tracts involved seem agreeable to negotiate

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such exchanges, *the* proposal shall be referred to the *department of natural resources and conservation, and that department shall thoroughly investigate* all the lands involved in *the* proposal and estimate the value of all of *the* lands and consider every factor in connection with *the* proposal as may affect the public interest."

Section 101. Section 81-2203, R.C.M. 1947, is amended to read as follows:

"81-2203. **Investigation and findings concerning exchange of land.** *The department of natural resources and conservation* shall, as soon as *it concludes its* investigation thereof, report to the board the facts disclosed by *its* investigation and include in *its* report a recommendation concerning *the* proposal including *its* reasons therefor in writing. If the board, after considering *the* report and recommendation and making such further investigation as it *considers* advisable, is of the opinion that *the* exchange is in the public interest, *the* board shall consider the entire matter and make findings and conclusions concerning *the* proposal and make an order rejecting the proposal and dismiss the same, or if in the judgment of *the* board *the* exchange is in the public interest and should be made, the order shall so *state* and shall contain an accurate description of all lands to be exchanged."

Section 102. Section 81-2204, R.C.M. 1947, is amended to read as follows:

"81-2204. **Hearing concerning exchange — notice — final order.** *(1) If* the *state* board *approves a* proposal for exchange, the *department* of state lands shall *publish* at least once in some newspaper of general circulation in each county in which any of the lands involved are located, a notice *stating* in general terms the proposal and describing the lands involved and ownership thereof. *The* notice shall fix a day not less than twenty (20) and not more than sixty (60) days from the date of the first publication at which the board will hear objections to the proposed exchange and at which any person, firm, or corporation may appear in person or by representative and be heard.

(2) Within ten (10) days after the conclusion of *the* hearing *the* board shall make a final order describing the terms of the proposal for the exchange of the land involved and shall either dismiss the proposal as not being in the public interest or direct the proper officers to proceed to *complete* the exchange."

Section 103. Section 81-2205, R.C.M. 1947, is amended to read as follows:

"81-2205. **Rules and regulations *shall* be made by board.** The board *shall* adopt and promulgate such rules, regulations, and methods

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of procedure affecting or touching the exchanges of lands *under this chapter,* as in *its* judgment *seems* advisable to the end that the public interests may be conserved."

Section 104. Section 81-2302, R.C.M. 1947, is amended to read as follows:

"81-2302. **Administration of lands by the state of Montana.** The board *shall* lease or sell *these* lands in the same manner as other school lands of the state are leased and sold. The board may sell or lease *these* lands without having *them* surveyed, *unless* the board *considers* it to be to the best interests of the state *to* have *the* lands surveyed as *in section 81-2303.* The proceeds from the leasing and sale of such lands shall be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state."

Section 105. Section 81-2303, R.C.M. 1947, is amended to read as follows:

"81-2303. **Survey of lands.** *If* the board *considers* it necessary that any of the lands mentioned in section 81-2301 be surveyed, *it* shall *have* the *lands* surveyed by the county surveyor of the county in which *the* lands *are located. If* there is no county surveyor, or if the county surveyor is unable to make *the* survey, or if the best interests of the state require, the board shall appoint a qualified surveyor to make *the* surveys, and *the* county surveyor, or other surveyor appointed *shall* make an actual survey thereof establishing four (4) corners of every quarter section and connecting the same with a United States survey, and within thirty (30) days after such survey file *with* the county clerk and recorder of *that* county a copy under oath of his field notes and plat and a duly certified copy of *his* field notes and plat with the *department.* For the services required in connection with the survey the county surveyor or other surveyor appointed *is* entitled to fees as prescribed in section 25-235. Such fees shall be paid in the same manner as other expenses of the department."

Section 106. Section 81-2402, R.C.M. 1947, is amended to read as follows:

"81-2402. **Definitions of terms.** Unless *the context requires otherwise, in this chapter:*

(1) "Account" means the resource development account in the earmarked revenue fund.

(2) "Income" means all proceeds received for the use of state land except revenues required by law to be placed in the Montana trust and legacy fund."

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Section 107. Section 81-2403, R.C.M. 1947, is amended to read as follows:

"81-2403. **Development account in earmarked revenue fund — purposes for which used.** A resource development account in the earmarked revenue fund in the state treasury is created to be used solely for the purpose of investing in the improvement and development of *state* lands acquired by grant or foreclosure, in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institutions and objects for which the lands are held in trust. The developments contemplated may include those projects that will develop or conserve the various state land resources including: water, both surface and underground, grazing land, agricultural land and timber land to the benefit of the state. They may also include expenses necessary to perfect title to lands claimed by the state which are suitable for development and other expenses or costs which in the judgment of the board *of land commissioners* are desirable or necessary in order to develop or increase the value of the land or the revenue therefrom. Appropriations from the account shall be expended for no other purposes."

Section 108. Section 81-2404, R.C.M. 1947, is amended to read as follows:

"81-2404. **Restriction on use of income from school and institutional lands.** Moneys in the account derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands, shall be expended by the department *of state lands* solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust."

Section 109. Section 81-2405, R.C.M. 1947, is amended to read as follows:

"81-2405. **Deductions from income for development account—maximum percentage.** The board shall determine the amount or percentage of income, not to exceed two and one-half per cent (2½%) which is necessary to achieve the purposes of this *chapter*, and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this *chapter*."

Section 110. Section 81-2406, R.C.M. 1947, is amended to read as follows:

"81-2406. **Crediting of deductions from land income.** All deductions from gross proceeds made in accordance with section *81-2405* shall be paid into the account, and the balance of *the*

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proceeds shall be paid into the state treasury to the credit of the *proper* account."

Section 111. Section 81-2407, R.C.M. 1947, is amended to read as follows:

"81-2407. **Investment of moneys in development account.** The board *of investments* shall invest the moneys in the resource development account in safe interest-bearing securities for the benefit of the account."

Section 112. Section 81-2408, R.C.M. 1947, is amended to read as follows:

"81-2408. **Rules and regulations.** The board shall adopt such rules as it *considers* necessary and proper for the purpose of carrying out the provisions of this *chapter.*"

Section 113. Section 82A-1101, R.C.M. 1947, is amended to read as follows:

"82A-1101. **Department of state lands—head.** There is a department of state lands. The department head is the board of land commissioners, *provided for* in article *X,* section 4 of the constitution *of this state.*"

Section 114. There is a new section to be numbered 82A-1101.1, R.C.M. 1947, which reads as follows:

82A-1101.1. **Functions of department.** The department has responsibility for the administration of laws relating to state lands, including, but not limited to, laws on:

(1) Selection, classification, appraisal, and exchange of lands (title 81, chapter 3);

(2) Leasing of agricultural lands (title 81, chapter 4);

(3) Coal mining leases and permits (title 81, chapter 5);

(4) Prospecting permits and mining lease (title 81, chapter 6);

(5) Leases and permits for deposits of stone, gravel, sand, and other minerals (title 81, chapter 7);

(6) Granting of easements for public purposes (title 81, chapter 8);

(7) Sale of state lands (title 81, chapter 9);

(8) Timber sales (title 81; chapter 16);

(9) Oil and gas leases (title 81, chapter 17);

(10) Hydroelectric power sites (title 81, chapter 18);

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(11) Exchange of timbered, cut, or burned over lands (title 81, chapter 22);

(12) Resource development (title 81, chapter 24);

(13) Mined land reclamation (title 50, chapters 10 and 12).

Section 115. Section 82A-1104, R.C.M. 1947, is amended to read as follows:

"82A-1104. **Commissioner of state lands.** (1) There is *a* commissioner of state lands.

(2) The commissioner is the chief administrative officer of the department, *and* under the direction of the board of land commissioners *he is responsible for the administration of the functions vested in the department. He* shall *also* perform those functions that are delegated to him by the board.

(3) The commissioner shall be appointed and serve as provided for directors in section 82A-106."

Section 116. Sections 50-1101 through 50-1114, 81-101, 81-201 through 81-203, 81-204.1, 81-207 through 81-210, 81-305, 81-306, 81-422.1, 81-618 through 81-620, 81-916, 81-934 through 81-942, 81-1301, 81-1702.3, 81-1703, 81-1713, 81-1714, 81-1724, 81-2304, 82-904, 82A-1102, 82A-1103, and 83-105, R.C.M. 1947, are repealed.

Approved: March 21, 1973.

CHAPTER NO. 429

An Act Amending Section 72-118, R.C.M. 1947, Providing that Upon the Filing by any Railroad of a Change or Revision of any Rate, Fare, Charge or Classification by Filing Tariff Sheet or Sheets, Every Railroad Upon Suspension by the Commission of the Tariff Sheet or Sheets must Submit Prepared Testimony and Exhibits to Support Such Changes or Revisions; Providing that the Complaint of any Interested Party May Be Filed with the Board Within Twenty (20) Days after the Date of Filing of Such Changes or Revisions; Providing Further that the Board May Suspend the Operation of Such Rate, Fare, Charge or Classification for a Period Not to Exceed One Hundred Eighty (180) Days and Within Sixty (60) Days the Board Must Investigate Such; and Providing for an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 72-118, R.C.M. 1947, is amended to read as follows:

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"72-118. **Power to alter classification or rate—approval of changes or revisions by the board—hearing complaint.** The said board shall have the power from time to time to change, alter, amend, or abolish any classification or rate established by it when deemed necessary, as hereinafter provided. The said board shall make and establish reasonable rates for the transportation of freight within the state of Montana, and shall prescribe rates, tolls and charges for all other service performed by any railroad subject hereto. No change or revision of any rate, charge, classification or rule of service contained in any tariff, classification or rule of a railroad shall be made by any railroad without first obtaining approval therefor from the board. Such changes or revisions shall be made by either of the methods hereinafter set forth:

(1) by filing an application with the board describing the nature and extent of the change, alteration or cancellation of the rate, classification, rule or regulation sought and the board shall thereafter give not less than ten (10) days' notice, in the manner determined by the board as most likely to give notice to the persons to be affected, of the time and place of public hearing to be held on the application by the board at which time and place the public generally, or any person, firm, or corporation shall have an opportunity to present such facts, information or statistics as shall be pertinent to the hearing then being held; or

(2) by filing with the board the tariff sheet or sheets containing such changes or revisions plainly stating the change or changes or revision or revisions, to be made; provided further, that the public shall be provided with such notice of the proposed changes or revisions as the board shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be deemed approved and effective thirty (30) days after the same are filed unless the proposed revisions or changes are suspended or disallowed by the board prior to the expiration of the thirty (30) day period; provided, however, that the board may, for good cause, allow any change or revision to become effective on less than thirty (30) days after the filing thereof. *Upon filing such changes or revisions, all tariff sheet or sheets, when suspended by the board, must be supported by such prepared testimony and exhibits from the railroad as will support such changes or revisions. The prepared testimony and exhibits must be filed with the commission thirty (30) days after the effective date of such suspension. Such testimony and exhibits may be supplemented prior to, or at the time of hearing, and supplemental exhibits may be filed after the close of the hearing at the direction or with permission of the commission.*

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Upon its own initiative, or upon the complaint of any interested party filed with the board within *twenty (20)* days after the date upon which a change or revision of any rate, fare, change or classification is filed with the board, the board may suspend the operation of such rate, fare, charge, or classification for a period not to exceed *one hundred eighty (180)* days, provided, however, that the order directing such suspension must be issued by the board not less than two (2) business days prior to the proposed effective date; and provided further, that the rail carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice *by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent* and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a rail carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff. When the suspension of any proposed change or revision in a tariff is ordered by the board, it shall also order a public hearing to consider the reasonableness of the proposed change or revision; due notice shall be given for such hearing to all known interests or affected persons and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the board shall issue an order approving, denying, or modifying the proposed change or revision; provided, however, that unless such hearing is held and such order is issued within *one hundred eighty (180)* days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

The board may, on its own motion or on the complaint by a shipper or other person interested investigate any rate, classification or rule approved and in effect for transportation of freight by any railroad within the state of Montana. The said board must, within *sixty (60)* days after the commencement of an investigation on the board's initiative, or after the filing with such board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said board."

Section 2. This act is effective on its passage and approval.

Approved: March 22, 1973.

CHAPTER NO. 430

An Act to Be codified in Chapter 15, Title 66, R.C.M. 1947, Relating to the Sale and Advertisement of Contraceptive Drugs

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and Devices; Providing Penalties; and Repealing Sections 94-3616, 94-3617, 94-3618 and 94-3619, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. It shall be unlawful for any person, firm, corporation, copartnership or association to sell, offer for sale, give away, through the medium of vending machines, personal or collective distribution, by solicitation, peddling or in any other manner whatsoever contraceptive drugs or devices, prophylactic rubber goods or other articles for the prevention of venereal diseases. The foregoing provisions shall not apply to regularly licensed practitioners of medicine, osteopathy or other licensed persons practicing other healing arts, and registered pharmacists, nor to wholesale drug jobbers or manufacturers who sell to retail stores only.

Section 2. It shall be unlawful to exhibit or display prophylactics or contraceptives in any show window, upon the streets, or in any public place other than in the place of business of a licensed pharmacist, or to advertise such in any magazine, newspaper or other form of publication, originating in, or published within the state of Montana; to publish, or distribute from house to house or upon the streets, any circular, booklet or other form of advertising or by other visual means or by auditory method or by radio broadcast; or by the use of outside signs on stores, billboards, window displays or other advertising visible to persons upon the streets or public highways; provided, however, that nothing in this act shall prevent the advertising of prophylactics or contraceptives in the trade press of those magazines whose principal circulation is to the medical and pharmaceutical professions; or to those magazines and other publications having interstate circulation, originating outside of the state of Montana where the advertising does not violate any United States law or federal postal regulation; nor to the furnishing within the store or place of business of a licensed pharmacist, to persons qualified to purchase, and then only upon their inquiry, such printed or other information as in requisite to proper use in relation to any merchandise coming within the provisions of this act.

Provided, nothing herein shall prevent the dissemination of medically acceptable contraceptive information by printed or other methods concerning the availability and use of any merchandise coming within the provisions of this act.

Section 3. Any officer of the law shall have the power to cause the arrest of any person violating any provision of this act, to seize stocks illegally held, and to make seizure of any mechanical device or vending machine containing any merchandise coming

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within the provisions of this act, holding the owner of such machine, the occupier and the owner of the premises where seizure is made to be in violation of this act.

Section 4. Any person, or any member of a firm, or copartnership or the officers of a corporation or association who or which knowingly violates any of the provisions of this act shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine not to exceed five hundred dollars ($500), or by imprisonment of not to exceed six (6) months in the county jail, or both; provided, however, that the justice of the peace courts and the district courts of the state shall have concurrent jurisdiction in all prosecutions and causes arising under this act.

Section 5. Sections 94-3616, 94-3617, 94-3618 and 94-3619, R.C.M. 1947, are repealed.

Approved: March 22, 1973.

CHAPTER NO. 431

An Act Reducing the Membership of the Legislative Council to Eight (8) Members and Providing Terms; Providing For Council Organization, Powers and Duties; Providing For Appointment of Subcommittees; Providing For Powers and Duties of Select and Standing Committees When the Legislature is not in Session; Providing Compensation For Council Members and Committees; Providing for a Priorities Committee To Determine Interim Studies; and Amending Sections 43-709 through 43-715, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 43-709, R.C.M. 1947, is amended to read as follows:

"43-709. **Legislative council — members — term — vacancies.** There is hereby created a legislative council which *consists* of *four (4)* members of the house of representatives who shall be appointed by the speaker of the house of representatives, *with the advice of the majority and minority leaders of the house* no more than *two (2)* of whom shall be of the same political party, and *four (4)* members of the state senate who shall be appointed by the committee on committees of the state senate, no more than *two (2)* of whom shall be of the same political party. *Membership on the council shall be for two (2) years and terminates with appointment of a new council or on the fiftieth legislative day of the first regular session following the biennium in which the appointment was made, which-*

ever event occurs first. A new council shall be appointed no later than the fiftieth day of each succeeding first regular session. Any vacancy on said legislative council occurring when the legislature is not in session *shall* be filled by the selection of another member *by the same method as the original appointment."*

Section 2. Section 43-710, R.C.M. 1947, is amended to read as follows:

"43-710. **Powers and duties.** *(1) If a question of state-wide importance arises when the legislature is not in session and a subcommittee has not been appointed to consider the question, the legislative council shall, with the concurrence of the priorities committee, assign such question to an appropriate subcommittee.*

(2) The legislative council shall supervise the activities of the council staff.

(3) The legislative council shall assist in the preparation and submission of all standing and select committee and subcommittee reports and recommendations to the legislature.

(4) This section shall not be construed to permit the council to approve or disapprove of any substantive portions or recommendations of a standing and select committee and subcommittee report."

Section 3. Section 43-711, R.C.M. 1947, is amended to read as follows:

"43-711. *(1)* **Executive director—personnel—special committees.** The legislative council may employ an executive director and such other personnel, not members of the council, as it deems necessary to assist in the preparation of *standing and select committee and subcommittee reports and* recommendations, proposed legislative acts and any other activities and shall fix the compensation of such employees. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

(2) The legislative council may establish functional divisions within the council staff in order to carry out all of the responsibilities delegated to the council by law or legislative rule, and shall include the following:

(a) Legislative Services Division;

(i) engrossing and enrolling,

(ii) mailroom,

(iii) printing;

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(b) Research and Reference Services Division;

(i) general and specialized legislative research,

(ii) legislative reference and information, including preparation and publication of the Legislative Review to be sold at the cost of the publication plus postage,

(iii) committee staffing when the legislature is not in session;

(c) Legal Services Division;

(i) bill drafting,

(ii) legal counseling;

(d) Management and Business Services Division;

(i) maintain bookkeeping records,

(ii) sign claims and payrolls,

(iii) order all printing, supplies, and equipment,

(iv) serve house and senate during the session."

Section 4. Section 43-712, R.C.M. 1947, is amended to read as follows:

"43-712. **Power to investigate and examine.** The legislative council, *on behalf of standing and select committees and subcommittees,* shall have authority to investigate and examine into the costs of state governmental activities and may examine and inspect all records, books and files of any department, agency, commission, board or institution of the state of Montana."

Section 5. Section 43-713, R.C.M. 1947, is amended to read as follows:

"43-713. **Hearings—oaths, subpoenas, compelling attendance of witnesses and production of records—contempt proceedings.** In the discharge of its duties *on behalf of standing committees and subcommittees,* the legislative council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued *by the council* on behalf of *a standing committee or subcommittee* or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on

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application of the legislative council to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein."

Section 6. Section 43-714, R.C.M. 1947, is amended to read as follows:

"43-714. **Expenses.** *When the legislature is not in session, members* of the legislative council, *the legislative subcommittees, select and standing committees, while going to, attending, and returning from legislative committee meetings and other necessary committee business authorized by the chairman of the legislative council are entitled to:*

(1) a mileage allowance as allowed by law,

(2) actual expenses, and

(3) compensation as provided by law."

Section 7. Section 43-715, R.C.M. 1947, is amended to read as follows:

"43-715. **Organization—officers—rules of procedure and records.** The legislative council shall organize *immediately following appointment* by electing one (1) of its members as its chairman and by electing such other officers from among its membership as the council may deem desirable. The council is empowered to adopt rules of procedure and to make all arrangements for its meetings and to carry out the purpose for which it is created. The council and *the subcommittees* are directed to keep accurate records of their activities and proceedings."

Section 8. There is a new section to be numbered 43-716, R.C.M. 1947, which reads as follows:

43-716. (1) The standing committees of the house and senate shall appoint subcommittees from each body to meet jointly on those bills and resolutions as designated to them by the priorities committee. The subcommittees shall be composed as follows:

(a) four (4) members of the house standing committee appointed by the chairman of the standing committee, no more than two (2) of whom may be of one political party; and

(b) four (4) members of the senate standing committee appointed by the chairman of the standing committee, no more than two (2) of whom may be of one political party.

(2) The chairman of the standing committee may appoint himself to the subcommittee.

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(3) The subcommittee shall elect its chairman and vice-chairman from among its members. The chairman and vice-chairman may not be members of the same political party.

(4) The subcommittees may perform their functions when the legislature is not in session and the personnel, data and facilities of the legislative council shall be made available to such subcommittees.

(5) The subcommittees shall accumulate, compile, analyze and furnish such information bearing upon any matters relating to existing or prospective legislation as may be determined by it upon its own initiative pertaining to important issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilitities of consolidations of departments, commissions, boards and institutions in state government for the elimination of unnecessary activities and duplications in office personnel and equipment, for the coordination of activities, for the purpose of increasing efficiency of service or effecting economies, and for the purpose of studying and inquiring into the financial administration of state governments and subdivisions thereof, including the problems of assessment and collection of taxes, and all other matters pertaining to the function of all departments and branches of state government.

(6) The subcommittees shall prepare such bills and resolutions as in its opinion the welfare of the state may require for presentation to the next regular session of the legislative assembly.

(7) Any subcommittee appointed for the purpose of considering deferred bills may make recommendations regarding the disposition of such bills. Prior to the next session, these recommendations shall be submitted to the standing committee having jurisdiction over the bill when the preceding session was adjourned. After having considered the subcommittee recommendations the standing committee may perfect a committee report on the bill to be presented to the legislature on the first legislative day of the next session.

(8) Any subcommittee appointed for the purpose of making a study assigned by the priorities committee may make recommendations for legislation. These recommendations and the study report shall be submitted to the full joint standing committees prior to the legislative session in which the report is to be made for approval by the joint standing committee. The approved report and recommendations shall be made to the legislature at the session designated by the resolution or the priorities committee.

(9) If any subcommittee member should miss more than two (2) committee meetings or hearings without just cause when the

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legislature is not in session, the member is deemed to have resigned and the vacancy shall be filled in the same manner as the original appointment. Any other vacancy shall be filled in the same manner.

Section 9. There is a new section to be numbered 43-717, R.C.M. 1947, which reads as follows:

43-717. (1) There is created a legislative committee on priorities which shall be composed of eight (8) members of the house rules committee, four (4) of whom shall be of the same political party, and eight (8) members of the senate rules committee, four (4) of whom shall be of the same political party.

(2) The committee on priorities shall be appointed at the same time as all other standing committees.

(3) The committee on priorities shall consider resolutions requesting council studies and all other study requests and establish and prepare a list of priorities from among them. They shall also set priorities on all bills and studies carried over to the second regular session. The committee shall transmit the list to the legislative council before the end of each regular session and shall assign the bills and studies to the appropriate standing committee in the order in which the studies and bills appear on the list of priorities. The committee shall assign as many studies and bills as the resources of the council staff allows.

Section 10. During an interim when the legislature is not in session, all regularly appointed standing or select committees of either house not formally discharged prior to the final adjournment of the preceding session shall continue as such committees, and are empowered to continue to sit as such committees as provided in this act.

Section 11. Before the close of any regular or special session of the biennium except for the last session of the biennium, the chairman of each standing committee shall designate to the committee on priorities the bills then pending before them. The committee on priorities shall determine whether such standing committee may act upon the legislation designated, and if the committee on priorities determines that the standing or select committee is not to act upon such legislation, it shall so inform the appropriate chairman, and that committee shall not then act upon such legislation. Such decisions of the committee on priorities shall be reported to the respective chairmen before the fifty-eighth legislative day of the first regular session, and the chairman of the select or standing committee involved may appeal the decision to the house of which he is a member, and if that house overturns the decision of the committee on priorities, the select or standing committee may act during the interim on the legislation in question.

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Section 12. This act is effective upon its passage and approval, provided that in the first regular session of the 43rd legislative assembly the time limits referred to in this act shall not apply.

Approved: March 22, 1973.

CHAPTER NO. 432

An Act Amending Sections 84-1302 and 84-1303, R.C.M. 1947, to Change the Basis for Determining and Raising the Strip Coal Mines License Tax and Removing the Reclamation Credit; Providing Distribution for a Portion of the Strip Mines License Tax to the Counties; and Providing for a Severability Clause.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-1302, R.C.M. 1947, is amended to read as follows:

"84-1302. **Strip coal mines license tax—amount—exemptions—testing of samples.** (1) *A* person engaged in or carrying on the business of strip coal mining, or engaged in the business of working or operating *a* strip coal mine or strip coal mining property from which marketable or merchantable coal is extracted or produced by means of strip mining, whether *the* person *carries* on *the* business or *engages* in *the* work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1921, and each year thereafter, when engaged in or carrying on *the* business, work or operations, pay to the state treasurer, for the use and benefit of the state of Montana, a license tax for engaging in and carrying on *the* business, work and operations, in the amounts listed in subsection (2) on marketable or merchantable coal extracted or produced by means of strip mining by *a* person in the state of Montana and shipped by *him* during *a* year, or used by *him* for any purpose except in connection with the operating of the strip coal mine or mining property from which the *coal* was extracted or produced by means of strip mining or delivered by *him* to *another* person for shipment, sale or use by *the* other person; provided, however, that nothing in this act *requires* laborers or employees, hired or employed, by *a* person to mine coal, or to work in or about, or in connection with *a* strip coal mine to pay license taxes, nor *is* work required to be done in prospecting for, or in developing, or in opening up *a* strip coal mine or strip coal mining property, *considered* to be the carrying on of a strip coal mining business, or the engaging in the business of working or operating of a strip coal

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mine; provided, further, that if during *the* work of developing or opening up *a* strip coal mine or strip coal mining property, marketable or merchantable coal *is* extracted or produced by means of strip mining and sold, then *this is considered* the carrying on of a strip coal mining business and the engaging in the business of working and operating a strip coal mine.

(2) The license tax paid under subsection (1) of this act *is* computed as follows:

(a) For each ton of coal having a British thermal unit (BTU) rating per pound of seven thousand (7,000) or less, twelve cents ($.12) per ton.

(b) For each ton of coal having a BTU rating of seven thousand one (7,001) to eight thousand (8,000), twenty-two cents ($.22) per ton.

(c) For each ton of coal having a BTU rating of eight thousand one (8,001) to nine thousand (9,000), thirty-four cents ($.34) per ton.

(d) For each ton of coal having a BTU rating of nine thousand one (9,001) and up, forty cents ($.40) per ton.

(3) The person paying such license tax shall be entitled to exempt annually from said license tax a total of five thousand (5,000) tons of coal, and such exemption may be applied all to one British thermal unit rating, or may be spread among the several ratings, but the total exemption may not exceed, in any case, five thousand (5,000) tons in any one year.

(4) The Montana state bureau of mines and geology (hereafter bureau) is designated as the testing agency for purposes of this act and is granted the right to promulgate rules and regulations to provide testing data required by this act. The rules and regulations promulgated under this act shall be structured to mutually protect the interest of the persons subject to the provisions of this act and the state of Montana.

(5) *A* person subject to the provisions of this act shall on or before the first day of August of each calendar year submit to the bureau a sample of mine run "as is" coal from their coal production area. Additional sampling shall be required of the persons subject to this act at the request of the bureau.

(6) The bureau shall provide a form showing the results of the testing provided for under this act to the persons subject to this tax and the board of equalization prior to the first of September of each calendar year."

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Section 2. There is a new section to be numbered 84-1309.1, R.C.M. 1947, which reads as follows:

84-1309.1. Disposal of license taxes. License taxes collected under the provisions of this chapter are allocated as follows:

(1) To the county general fund from which coal was mined one cent (1¢) per ton.

(2) All other revenues from license taxes collected under the provisions of this chapter shall be deposited to the credit of the general fund of the state.

Section 3. Section 84-1303, R.C.M. 1947, is amended to read as follows:

"84-1303. **Payment of annual license tax.** Such annual license tax shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 30th, September 30th, and December 31st in each year, beginning with the quarter ending March 31, 1921, and the amount of the license tax due for each such quarter shall be paid to the state treasurer within thirty (30) days after the end of each such quarter."

Section 4. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved: March 22, 1973.

CHAPTER NO. 433

An Act Implementing Article V, Section 6 of the 1972 Montana Constitution by Creating Procedures which Enable the Legislature to Call Itself into Special Session; and Providing for an Immediate Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The legislature may be convened in special session by the governor or at the written request of a majority of the members. The governor or the legislature may limit the special session to the subjects specified in the call.

Section 2. When the legislature is in session, a majority of the members may by a written request call a special session to meet at a specified time.

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Section 3. When the legislature is not in session, any ten (10) members may in writing request the secretary of state to poll the legislators to determine if a majority are in favor of a special session. The request must state:

(1) the conditions warranting the call of a special session;

(2) the purposes of the special session; and

(3) the proposed convening date and time of the special session.

Section 4. Within five (5) days after receiving a request, the secretary of state shall send to all legislators by certified mail a ballot which contains:

(1) the names of the legislators making the request;

(2) the reasons for calling the special session;

(3) the purposes of the special session;

(4) the requested convening date and time of the special session;

(5) the date by which legislators must return the ballot which may not be more than thirty (30) days after the date of the mailing of the ballots; and

(6) a stamped return envelope.

Section 5. When ten (10) legislators consider an immediate special session necessary, they may request the secretary of state to notify each legislator by the fastest available means. The notification shall include the names of the legislators making the request, the conditions which necessitate the call, and the proposed date and time of convening. Each legislator shall send a letter to the secretary of state approving or rejecting the call for a special session. The letter is a legal ballot.

Section 6. If a majority of the legislators reply affirmatively to the poll, the secretary of state shall notify each legislator of the time and day on which the special session shall convene.

Section 7. If a majority of the legislators fail to approve the call for a special session within thirty (30) days after the secretary of state mails the ballots or notifies each legislator, all ballots are void and may not be used again. The entire process must be repeated to call the legislature into special session.

Section 8. This act is effective upon passage and approval.

Approved: March 22, 1973.

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CHAPTER NO. 434

An Act to Amend Section 66-3102, R.C.M. 1947, Changing the Composition of the Board of Nursing Home Administrators; and Providing An Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-3102, R.C.M. 1947, is amended to read as follows:

"66-3102. **Composition of the board.** There is hereby created the board of nursing home administrators which shall consist of five (5) *voting* members. *No more than two (2) of these members shall be nursing home administrators. The other three (3) members shall be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients, but no two (2) of the latter shall be from the same profession and none may have a financial interest in any nursing home.* The *director of the department of health and environmental sciences,* or his designee, and the *director of the department of social and rehabilitation services,* or his designee, shall serve ex officio without the power to vote as members of such board. *The* terms of all appointive members shall be three (3) years, *and they shall serve staggered terms with no more than two (2) terms expiring each year.* The appointees shall be selected from a list of three (3) nominees submitted for each appointee, to the governor by the board of directors of the Montana nursing home association, inc.

Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term, from a list of three (3) names submitted to the governor by the board of directors of the Montana nursing home association, inc. Appointive members may be removed by the governor for cause after due notice and hearing. *No* person shall be eligible for appointment as a *nursing home administrator* member unless he is the holder of a license as a nursing home administrator."

Section 2. This act is effective on its passage and approval.

Approved: March 22, 1973.

CHAPTER NO. 435

An Act to Amend Section 16-2818, R.C.M. 1947, by Providing the Amount which Various Counties can Be Reimbursed by the Highway Patrol Bureau, Department of Justice, for Prisoner Board Bill; and Defining the Word "Day" for the Purpose of this Act.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-2818, R.C.M. 1947, is amended to read as follows:

"16-2818. **Sheriff to receive all persons duly committed — medical expense.** The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing and bedding, for which he shall submit claims for the actual expenses incurred to the board of county commissioners for their determination, and, except as provided in the next section, to be paid out of the county treasury. *In the event said person is committed to jail by the highway patrol bureau, department of justice, the state of Montana shall upon claim presented for the county by the clerk and recorder pay into the county treasury of the county the actual expenses incurred or the sum of five dollars ($5) per day, whichever is less, for each and every prisoner held in the county jail upon order or commitment of the highway patrol bureau or any department or officer thereof. For the purposes of this act, a day shall be defined as a twenty-four (24) hour period or portion thereof, beginning with the time of incarceration. Such claims upon the highway patrol bureau, department of justice, shall be paid to the various counties out of funds appropriated for that purpose.* If in the opinion of the sheriff any prisoner, while detained, requires medication, medical services or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained. The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay."

Approved: March 22, 1973.

CHAPTER NO. 436

An Act to Repeal Section 32-4304, R.C.M. 1947, and Amend Section 32-4305, R.C.M. 1947, to Eliminate the Requirement of Petitions or Consent from Local Authorities Before Access Can Be Controlled or Limited in Certain Areas.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 32-4305, R.C.M. 1947, is amended to read as follows:

"32-4305. **Powers of highway authorities.** (1) Those authorities of the state, counties, and municipalities authorized to

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participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled access facilities for public use. Each such authority shall, by resolution, make the findings and determinations provided for in section 10-103 [32-4303] of this chapter.

(2) Within incorporated cities and towns, and upon county roads or secondary highways, the department of highways shall not control access without the consent of the appropriate governing body.

(3) Each authority may also exercise, with relation to controlled access facilities, any and all additional authority now or hereafter vested in it over highways, roads, or streets within its respective jurisdiction. It may regulate, restrict, or prohibit the use of controlled access facilities by any vehicles or traffic."

Section 2. Section 32-4304, R.C.M. 1947, is repealed.

Approved: March 22, 1973.

CHAPTER NO. 437

An Act to Amend Section 53-431, R.C.M. 1947, Providing a Six (6) Year Limitation of Driver License and Registration Suspensions Resulting from Unsatisfied Judgments.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 53-431, R.C.M. 1947, is amended to read as follows:

"53-431. **Suspension to continue until judgments paid and proof given.** Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided, and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 53-430 and 53-433, *or six (6) years have passed from date judgment was first entered as provided in section 93-5708.*

Approved: March 22, 1973.

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CHAPTER NO. 438

An Act to Provide For Combining All State Employees Into One or More Groups For Purposes of Negotiating and Contracting For Group Insurance.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. As used in this act:

(1) "Department" means the department of administration of the state of Montana provided for in chapter 2 of title 82A.

(2) "Employee" means an employee of the state of Montana eligible for insurance coverage pursuant to section 11-1024 and a member, officer, or employee of the legislative branch of state government. The term "employee" does not include employees of counties, cities, towns and school districts of the state of Montana.

Section 2. The department of administration shall negotiate and contract for all contracts of group insurance and health service corporation plans issued to all officers and employees of all departments of the executive and legislative branches of the government of the state of Montana.

Section 3. (1) Before the department begins negotiations for a group insurance policy, the director of the department shall create an advisory council to advise him on matters pertaining to the negotiating and contracting. The advisory council shall be created under section 82A-110, but the members shall be selected in accordance with subsection (2) of this section.

(2) The officers and employees of each principal department and constitutional office in the executive branch of state government and the members, officers, and employees of the legislative branch of state government shall select, in accordance with the rules adopted under section 6 of this act, a representative to serve on the advisory council and to represent the interests of the officers and employees.

(3) The advisory council shall meet quarterly to review the existing policy, to report and review claim problems and provide advice to the department for future negotiations.

Section 4. The department may combine existing employee groups in one or more departments of the executive branch of the government of the state of Montana into a single group and contract on behalf of the combined group. The department may also combine all employees of the executive and legislative branches of the government of the state of Montana into one group.

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Section 5. Two-thirds (⅔) of the members of any existing component employee group, which is part of the combined group on whose behalf the department has contracted for group insurance, must approve the policy in order for it to be effective as to that component group. When the policy is approved, the employer contribution provided for in section 11-1024 shall then be paid to the insurer issuing the approved policy. The component employee group shall retain the power to negotiate and contract for group insurance and health service corporation plans if such component group does not approve the policy negotiated by the department.

Section 6. The department is empowered to promulgate such rules as are required to carry out the purposes of this act.

Section 7. The department's cost of negotiating and administering group insurance policies pursuant to this act are to be included as part of the premium paid and returned to the department by each insurer from the premiums it receives. All department costs of negotiating and administering group insurance policies are subject to the approval of the advisory council.

Approved: March 22, 1973.

CHAPTER NO. 439

An Act to Amend Sections 66-101, 66-103, 66-107, 66-108, 66-109 and 66-112, R.C.M. 1947, to Provide For Staggered Terms For Members of the Board of Architects; to Provide Definitions; to Raise Examination Fees; to Provide For Compensation of Board Members; and to Provide Grounds For Disciplinary Action; and Providing An Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-101, R.C.M. 1947, is amended to read as follows:

"66-101. **Appointment of board of** *architects.* Within thirty days after the passage of this act, the governor, with the consent and advice of the senate, shall appoint three skilled and capable architects, who shall have been residents of the state of Montana for not less than three years prior to their appointment, not more than two of whom shall be residents of the same county, and who shall have been in continuous practice of the profession for three years, who shall constitute the board of architectural examiners for the purpose of this act.

Of the members appointed to terms beginning on March 27, 1973, one (1) member shall be appointed for a one (1) year term,

one (1) member shall be appointed for a two (2) year term, and one (1) member shall be appointed for a three (3) year term. After the expiration of these initial terms, members shall serve three (3) year terms. All vacancies shall be filled in like manner as the appointments are made. Appointments made when the senate is not in session shall take effect immediately, and may be confirmed at the next ensuing session."

Section 2. Section 66-103, R.C.M. 1947, is amended to read as follows:

"66-103. **Definitions—examinations for certificates to practice —subjects embraced in—granting of certificates—registration without examination under certain circumstances.** (a) Except as otherwise provided in this act, no person shall practice architecture in the state of Montana or use the title "architect" or "registered architect," or any words, letters, figures, or other device indicating or intending to imply that he or she is an architect, without having qualified as required by this act.

(b) The practice of architecture within the meaning and intent of this act consists of rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or any other service in connection with the design of a building or addition or alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization.

(c) An architect within the meaning of this act is an individual technically and legally qualified to practice architecture and who is authorized under this act to practice architecture.

(d) A building, for the purposes of this act, is a structure *intended primarily for human occupancy or use.*

(e) Every person hereafter wishing to practice architecture in this state shall apply to said board for a certificate so to do. Every person so applying shall *have successfully completed the requirement of prerequisites in education, practical experience and a written examination as prescribed by the board in conformance with the standard national council of architectural registration boards examination and grading procedure.* After examination said board shall, if the candidate has been found qualified, grant a certificate to such candidate to practice architecture within the state of Montana, which said certificate can only be granted on the consent of not less than two members of the board, and attested by the secretary, and have the seal of said board attached thereto; *provided, that an architect holding a valid and current license to practice in another state, territory or country will be granted a certificate*

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to practice in Montana following presentation of a national council certificate issued by national council of architectural registration boards and approved by the Montana board of architects. But no arrangement shall be made under the provisions of this section which will be liable to lower the standard of practice of architecture in the state of Montana. The board may, if deemed necessary, require an examination of applicants for license from other states after careful consideration of credentials from such states. The board shall by regulation establish methods and procedures for investigation of applicants for license by reciprocity.

(f) Any properly qualified persons shall be granted registration without examination who submits an affidavit establishing to the satisfaction of the board of architectural examiners that he or she was a resident of the state of Montana for one (1) year immediately preceding the passage and approval of this act, that he or she was regularly engaged in the practice of architecture in the state of Montana for five (5) years immediately preceding July 1, 1957; provided that registration shall not be granted under this subsection unless the application therefor is filed with the board of architectural examiners within one (1) year after passage and approval of this act."

Section 3. Section 66-107, R.C.M. 1947, is amended to read as follows:

"66-107. **Registration limited to individuals—employees of architects entitled to practice under supervision—exceptions—exemptions.** (a) No firm, company, partnership, association, corporation or other similar organization shall be registered as an architect. Only individuals shall be registered as architects but a number of architects constituting a firm may use the collective title "architects" or "registered architects."

(b) Nothing contained in this act shall prevent draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this act from acting under the instruction, control, or supervision of their employers, or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance thereto. Nor shall anything contained in this act be construed to apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health; nor to prevent the preparation of details and shop drawings by persons, other than architects, for use in connection with the execution of their work; nor to prevent the preparation of drawings or details for fixtures, cabinet work, furniture, or other interior appliances or equipment, or for any work neces-

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sary to provide for their installation unless the same involves public health or safety. None of the acts enumerated in this paragraph shall be interpreted or construed as the practice of architecture.

(c) Nothing in this act shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this act:

1. Consultants, officers, and employees of the United States while engaged solely in the practice of architecture for said government.

2. Professional engineers from performing architectural services which are purely incidental to their engineering practice.

3. Any person from planning, designing, altering, constructing, repairing, or supervising construction of *residential* or farm buildings.

4. The planning, designs, alteration, consultation, repair or supervision of a building by its owner."

Section 4. Section 66-108, R.C.M. 1947, is amended to read as follows:

"66-108. **Fees payable by applicants for examination—disposition of fees.** Applicants for examination shall pay in advance to the secretary of said board a fee *commensurate with the cost and set by the board,* which fee shall defray the entire expense of such candidate, before the aforesaid board of *architects.* Any applicant failing to pass the said examination shall be entitled to a second examination within one (1) year upon payment of *a reasonable fee, prescribed by the board.*

The money received from said applicant shall be turned over to the state treasurer of the state of Montana, and shall be deposited by him in the earmarked revenue fund for the use of the board of architectural examiners."

Section 5. Section 66-109, R.C.M. 1947, is amended to read as follows:

"66-109. **Compensation of members of board—disposition and use of funds—report.** Each member of the examining board is hereby allowed the sum of *twenty-five dollars ($25)* per day *plus* mileage *in accordance with section 59-801 and a per diem allowance of actual and necessary expenses* while in the discharge of his actual duties.

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And all fees and moneys received for licenses from practicing architects shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of architectural examiners."

Section 6. Section 66-112, R.C.M. 1947, is amended to read as follows:

"66-112. **Revocation of license.** The board of architectural examiners may revoke any certificate in the manner hereinafter provided if proof satisfactory to the board be presented in the following cases: (a) In case it is shown that the certificate was obtained through fraud or misrepresentation; (b) In case the holder of the certificate has been found guilty by said board or by a court of justice of any fraud or deceit in his professional practice or has been convicted of a felony by a court of justice; (c) In case the holder of the certificate has been found guilty by said board of gross incompetency or of recklessness in the planning or construction of buildings; (d) In case the holder of the certificate has been found guilty by said board of any of the following acts which are hereby declared to constitute unprofessional conduct; (1) Willful departure in any material respect from approved plans or specifications without the consent of the owner or his duly authorized representative, (2) Willful violation of the building codes of the state or any political subdivision thereof, (3) Aiding or abetting any unlicensed person to violate or evade the provisions of this act, (4) Sealing or signing plans or specifications not prepared under his direct supervision and control; *or (e) In case the holder of the certificate has violated standards of professional conduct adopted by the board.*

The proceedings for revocation of a certificate shall be commenced by filing written charges against the accused with the board of *architects* either by the board itself or by any complainant. A copy of the charges together with a notice of the time and place of hearing shall be served on the accused at least thirty (30) calendar days in advance of such hearing. Where personal service cannot be made within the state of Montana, service may be made by publication in accordance with such rules as the board may adopt, following generally and in principle the provisions of sections 93-3013, 93-3014, and 93-3015. At the hearing, the accused shall have the right to be represented by counsel, introduce evidence, and examine and cross-examine witnesses. The secretary of the board is hereby empowered to administer oaths. The board shall make a written report of its findings and conclusions, which report, with a transcript of the entire record of the proceedings, shall be filed in the office of the secretary of state, and, if the board's findings and conclusions shall be adverse to the accused, his or

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her certificate shall stand revoked and annulled at the expiration of thirty (30) days from the filing of such report, unless within said period of thirty (30) days a writ of review shall be issued as hereinafter provided, in which event said certificate shall not stand suspended until the final determination of the courts upon such writ of review.

Any party aggrieved by the decision of the said board may seek a review thereof in the district court of *any* judicial district of the state of Montana in the manner set forth in sections 93-9001 to 93-9011, and said court shall affirm, reverse, or modify the findings of said board in accordance with law.

The said board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and the secretary of the board shall have power to issue subpoenas, and upon the failure of any person to attend as a witness when duly subpoenaed or to produce the documents when duly directed by said board, the board shall have power to refer the said matter to the district court of the first judicial district of the state of Montana, which may order the attendance of such witness or the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpoena issued or to testify in a case pending before said court."

Section 7. This act shall be effective upon its passage and approval.

Approved: March 22, 1973.

CHAPTER NO. 440

An Act to Provide that the Department of Administration Shall Develop a Wage and Salary Plan for State Employees for Submission to the 1975 Legislature and Be Granted Immediate Authority to Develop a Personnel Classification Plan; Providing that Salary Increases, Changes in Position Classifications and Changes in Number of Employees Must Be Approved by the Department of Administration; and Creating a Board for the Hearing of Grievances that Result from the Implementation of this Act.

Be it enacted by the Legislative Assembly of the State of Montana:

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Section 1. For the purposes of this act:

(1) "Agency" means any department, board, commission, office, bureau, institution or unit of state government recognized in the state budget.

(2) "Department" means the department of administration.

(3) "Program" means a combination of planned efforts to provide a service.

(4) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time or intermittent employment of one person.

Section 2. This act does not apply to the following positions in state government:

(1) elected officials;

(2) officers of the legislative branch;

(3) judges of the judicial branch;

(4) members of boards and commissions appointed by the governor, appointed by the legislature or appointed by other elected state officials;

(5) officers or members of the militia;

(6) agency heads appointed by the governor;

(7) academic personnel under the authority of the board of regents of higher education.

Section 3. The department shall develop a personnel classification plan for all state positions and classes of positions in state service, following hearings involving affected employees and employee organizations, except those exempt in section 2 of this act.

Section 4. (1) In providing for the classification plan the department shall group all positions in the state service into defined classes based on similarity of duties performed, responsibilities assumed, and complexity of work so that:

(a) similar qualifications of education, experience, knowledge, skill and ability can be required of applicants for each position in the class;

(b) the same title can be used to identify each position in the class;

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(c) similar pay may be provided, under the same conditions, with equity to each position within the class.

(2) A class may consist of only one (1) position.

Section 5. The department shall continuously review all positions on a regular basis and adjust classifications to reflect significant changes in duties and responsibilities; provided, however, employees and employee organizations will be given the opportunity to appeal any changes in classifications or positions.

Section 6. The department shall develop a wage and salary plan for presentation to the 1975 legislature. If adopted by the 1975 legislature, the wage and salary plan shall be integrated with the personnel classification plan to insure that positions within classes are paid at similar rates of pay after considering different rates of pay that may result from merit increases and years of state service.

Section 7. In developing the wage and salary plan the department shall consider all factors, including the results of meetings with employees and employee organizations, that are necessary to insure that the plan will continuously enable the state service to attract and retain an adequate number of professional, technical and administrative personnel.

Section 8. The wage and salary plan shall not decrease the current wage or salary or the value of fringe benefits provided by law to an employee in the state service before the adoption of the plan.

Section 9. To facilitate state budgeting, and as directed by the department, each agency shall maintain a list of current authorized positions, the number of positions in each class and the salaries or wages being paid, appropriated or proposed for each class.

Section 10. Based on documentation to be submitted by each agency, the department shall determine the number and classes of positions or number of employees of each agency or program thereof and submit the determinations to the governor for approval or amendment before the beginning of each fiscal year. At any time, upon request of the agency, the department may, with the approval of the governor, amend the number and classes of positions or number of employees in any agency or program thereof. This section does not limit legislative authority to amend the determinations of the department.

Section 11. An agency may not increase the salary or wage of any class of positions without authorization of the department.

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Section 12. An agency may not increase the number and class of positions under its authority without the authorization of the department.

Section 13. This act does not limit the authority of the legislature relative to appropriations for salary and wages; and the department shall adjust its determinations in accordance with legislative appropriations.

Section 14. (1) The department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state, and make available the facilities of the department to this end;

(b) foster and develop programs for the improvement of employee effectiveness including training, safety, health, counseling and welfare;

(c) investigate from time to time the operation and effect of this act and the policies made thereunder and report the findings and recommendations to the governor;

(d) establish policies, procedures and forms for the maintenance of records of all employees in the state service;

(e) apply and carry out this act and the policies thereunder, and perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of this act.

(2) The department may delegate authority granted to it under this chapter to agencies in the state service that effectively demonstrate the ability to carry out the provisions of this act, provided that such agencies remain in compliance with policies, procedures, time tables and standards established by the department.

(3) The department shall issue personnel policies for the state. Adequate public notice shall be given to all interested parties of proposed changes or additions to the personnel policies before the date they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date they are to take effect.

Section 15. There is a new section to be numbered 82A-1014, R.C.M. 1947, which reads as follows:

82A-1014. (1) There is created a board of personnel appeals.

(2) The board is allocated to the department of labor and

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industry for administrative purposes only as prescribed in section 82A-108.

(3) The board consists of five (5) members appointed by the governor as prescribed in section 82A-112. Two (2) members shall represent management, two (2) members shall represent employees or employee organizations of the state, and one (1) member shall represent a neutral position.

(4) Any employee or his representative affected by the operation of this act is entitled to file a complaint with the board and to be heard, under the provisions of a grievance procedure to be prescribed by the board. The board may instruct the department to take corrective action that may be necessary to resolve grievances that are found to be legitimate.

Section 16. The merit system, established in 1940 by certain state agencies of state government, as a requirement for receipt of federal funds, shall continue to operate for those agencies under the policies and procedures established by the merit system council.

Section 17. If a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

Approved: March 22, 1973.

CHAPTER NO. 441

An Act granting Public Employers and Public Employees the right to bargain collectively; providing that the Board of Personnel Appeals may designate labor organizations to be exclusive representative of employees in certain units; and may also call elections by employees for the same purpose; providing the Board of Personnel Appeals shall establish remedies for unfair labor practices; and providing procedures for carrying out the Act.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

Section 2. When used in this act: (1) "public employer" means the state of Montana or any political subdivision thereof,

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including but not limited to, any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees;

(2) "public employee" means a person employed by a public employer in any capacity, except elected officials, persons directly appointed by the governor, supervisory employees and management officials (as defined in subsection (3) and (4) below) or members or any state board or commission who serve the state intermittently, professional instructors, teachers, school district clerks and school administrators, and paraprofessional instructors employed by school boards and districts of this state, registered professional nurses performing service for health care facilities, professional engineers and engineers in training, and includes any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action;

(3) "supervisory employee" means any individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(4) "management officials" means representatives of management having authority to act for the agency on any matters relating to the implementation of agency policy;

(5) "labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment;

(6) "exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer;

(7) "board" means the board of personnel appeals provided for in section 82A-1014;

(8) "person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;

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(9) "unfair labor practice" means any unfair labor practice listed in section 5;

(10) "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand the proximate relation of employer and employee;

(11) "appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

Section 3. (1) Public employees shall have, and shall be protected in the exercise of, the right of self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion.

(2) Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as but not limited to:

(a) direct employees;

(b) hire, promote, transfer, assign, and retain employees;

(c) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;

(d) maintain the efficiency of government operations;

(e) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;

(f) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;

(g) establish the methods and processes by which work is performed.

(3) Labor organizations designated in accordance with the provisions of this act are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

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(4) Certification as an exclusive representative shall be extended or continued as the case may be only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as: provisions are made for democratic organization and procedures; elections are conducted pursuant to adequate standards and safeguards; controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and requirements exist for maintenance of sound accounting and fiscal controls including annual audits.

Section 4. The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (3) of section 5 of this act.

Section 5. (1) It is an unfair labor practice for a public employer to:

(a) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 3 of this act;

(b) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under section 12 (3), an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(c) discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; however, nothing in this act or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require that an employee who is not or does not become a union member shall be required as a condition of employment to have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(d) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this act;

(e) refuse to bargain collectively in good faith with an exclusive representative.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right guaranteed in subsection (1) of section 3 of this act, or a public

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employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(b) refuse to bargain collectively in good faith with a public employer, if it has been designated as the exclusive representative of employees;

(c) use agency shop fees for contributions to political candidates or parties at state or local levels.

(3) For the purpose of this act, to bargain collectively is the performance of the mutual obligation of the public employer, or his designated representatives, and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(4) This act does not limit the authority of the legislature, any political subdivision or the governing body, relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

Section 6. (1) Whenever in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that thirty percent (30%) of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative, or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive representative in an appropriate unit, the board or an agent of the board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. If the board or an agent of the board finds that there is a question of representation, it shall direct an election by secret ballot to determine whether, and by which labor organization the employees

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desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof. Only those labor organizations which have been designated by more than ten percent (10%) of the employees in the unit found to be appropriate shall be placed on the ballot. Nothing in this section prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

(2) In order to assure employees the fullest freedom in exercising the rights guaranteed by this act, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining, and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

(3) An election shall not be directed in any bargaining unit or in any subdivision thereof within which, in the preceding twelve (12) month period, a valid election has been held. The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election. Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted; the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

Section 7. Violations of the provisions of section 5 of this act are unfair labor practices remediable by the board in the following manner:

(1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent designated by the board for such purposes, shall issue and cause to be served upon the person a copy of the complaint and a notice of hearing before the board, a member thereof, or before a designated agent, at a time and place therein fixed, not less than five (5) working days after the date of service. Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby. The person upon whom the charge is served shall file an answer to the com-

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plaint. The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony. In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(2) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter in its discretion the board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this act. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. If upon the preponderance of the testimony taken the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint. No notice of hearing shall be issued based upon any unfair labor practice more than six (6) months before the filing of the charge with the board, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the six (6) month period shall be computed from the day of his discharge. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if it is found that the individual was suspended or discharged for cause. If the evidence is presented before a member of the board, or before an examiner, the member, or the examiner as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within twenty (20) days after service thereof upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board.

(3) Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

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Section 8. (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order, and shall file in the district court, at its own expense, the record in the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least twenty (20) days before the date set for hearing. After the hearing the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and proper, enforcing as so modified, or setting aside in whole or in part the order of the board. No objection that has not been raised before the board shall be considered by the court, unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(2) The commencement of proceedings under subsection (1) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

Section 9. The chief executive officer of the state or political subdivision or chairman of the county commissioners, whether elected or appointed, or his designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

Section 10. (1) Any agreement reached by the public employer and the exclusive representative shall be reduced to writing and shall be executed by both parties.

(2) An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

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(3) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this act and signed by the chief executive officer of the state or political subdivision or his representative. A publication of the agreement is not required to make it effective. The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this act is the exclusive method of making a valid agreement for public employees represented by a labor organization.

Section 11. In any action brought under the provisions of this act in the courts of this state the public employer shall be represented by the attorney general or attorney of subdivision, and the board shall be represented by counsel hired to represent the board for purposes of that proceeding.

Section 12. Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

Section 13. (1) To accomplish the objectives and to carry out the duties prescribed by this act, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public hearings are taking place, or the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt.

(3) Any subpoena, notice of hearing or other process or notice of the board issued under the provisions of this act shall be served as provided by the rules of civil procedure.

(4) The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this act.

Section 14. (1) If after a reasonable period of negotiation over the terms of an agreement, or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

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(2) If upon expiration of an existing collective bargaining agreement, or thirty (30) days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate fact-finding.

(3) Within three (3) days of receipt of such petition the board shall submit to the parties a list of seven (7) qualified, disinterested persons from which list the parties shall alternate in striking three (3) names, and the remaining person shall be designated fact finder. This process shall be completed within five (5) days of receipt of the list. The parties shall notify the board of the designated fact finder.

(4) If no request for fact-finding is made by either party before the expiration of the agreement, or thirty (30) days following certification or recognition of an exclusive representative, the board may initiate fact-finding as provided for in (3) above.

(5) The fact finder shall immediately establish dates and place of hearings. Upon request of either party of the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings, but no later than twenty (20) days from the day of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The fact finder may make this report public five (5) days after it is submitted to the parties. If the dispute is not resolved fifteen (15) days after the report is submitted to the parties, the report shall be made public.

(6) The public employer and the exclusive representative shall be the only proper parties to fact-finding proceedings.

(7) The cost of fact-finding proceedings shall be equally borne by the board and the parties concerned.

(8) Nothing in this section prohibits the fact finder from endeavoring to mediate the dispute in which he has been selected or appointed as fact finder.

(9) Nothing in this section prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached the arbitration shall supersede the fact-finding procedures set forth in this section. An agreement to arbitrate, and the award issued in accordance with such agreement shall be enforceable in the same manner as

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is provided in this act for enforcement of collective bargaining agreements.

Section 15. If any provision of this act or the application of such provision to any person or circumstance is held invalid, the remainder of this act or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Section 16. Nothing in this act shall be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to the effective date of this act.

Section 17. All hearings and appeals shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act.

Approved: March 22, 1973.

CHAPTER NO. 442

An Act Providing for Regulation of the Various Phases of the Marketing and Distribution of Agricultural Seeds Intended for Propagation Purpose and Restricting the Methods of Disposition of Screenings that Contain Viable Prohibited Noxious Weed Seed; and Repealing Sections 3-301 through 3-309, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. When used in this act:

(1) "Department" means the department of agriculture.

(2) "Agricultural seed" means the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds, and includes lawn seeds and mixtures of seeds.

(3) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to increase seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the certifying agency.

(4) "Person" means any individual, firm, copartnership, corporation, or association.

(5) "Public agricultural seed warehouse" means and includes any warehouse or structure in which agricultural seed is received from the public for storage, assembling, or cleaning.

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(6) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or processing.

(7) "Seed buyer" means any person engaged in the business of buying agricultural seed for shipment, cleaning, processing, or for resale and who does not own, control, or operate a public agricultural seed warehouse. Any individual employed by a "seed buyer" is not included in this term.

(8) "Seed dealer" means any person who offers for sale, sells, or barters agricultural seeds to the ultimate consumer.

(9) "Seed labeler" means any person affixing labels to agricultural seeds with his name and address listed as required in section 3-802.2 when such seed is distributed in Montana.

(10) "Seed processing plant" means any place of business that repackages, cleans, blends, treats, or otherwise manipulates agricultural seeds.

(11) "Seed warehouseman" means any person owning, controlling, or operating a public agricultural seed warehouse.

(12) Bin run seed sales from one farmer to another farmer mean buyer beware and are exempt from this act.

Section 2. (1) All seed processing plants, seed labelers, seed buyers, and public agricultural seed warehouses shall obtain a license from the department before doing business in this state; however, a Montana certified seed grower, when processing or labeling certified seed from his own production is not required to be licensed under this section.

(2) All licenses are issued on a fiscal year basis to expire on June 30 of each year. A license may cover any or as many as all four activities: processing plant, seed labeler, seed buyer, and public agricultural seed warehouse.

(3) Application for license is made in a manner and on forms provided by the department. Any nonresident shall file a written power of attorney designating the secretary of state as the agent of such nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over such nonresident applicant. A nonresident who has a duly appointed resident agent upon whom process may be serviced as provided by law, is not required to designate the secretary of state as such agent. The department shall be furnished with a certified copy of the designation of the secretary of state or of a resident agent.

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(4) The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed and may carry out inspections during normal business hours to determine that these standards are being adhered to.

(5) Each license costs twenty-five dollars ($25) per year.

(6) Failure on the part of a licensee to comply with the rules issued under the authority of this section is sufficient cause for cancellation of a license by the department provided the licensee is given a reasonable opportunity to correct inadvertent and non-recurring deficiencies.

(7) The department may by rule establish bonding and insurance requirements for each class of license.

Section 3. All screenings whether from seed processing plants or other sources represent both a valuable and potentially hazardous product. Their movements are restricted as follows:

(1) The viability of prohibited noxious weed seed as defined in section 3-802.1(4)(b) shall be destroyed before screenings are utilized in feed or in any other way in which they may propagate their kind. However, if these screenings are sold for feed, it shall be the responsibility of the feed buyer to haul under a tarp cover or other tight container until the provisions of this act are met.

(2) The department has authority to issue rules to restrict or exempt from restriction the holding and movement of screenings when the public interest is served by so doing.

Section 4. (1) No person may distribute seed without obtaining a dealer's license for each place of business from the department. No license is required of a person who distributes seeds only in sealed packages of less than one (1) pound, packed by a licensed seed labeler and bearing his name and address. Each dealer's license costs ten dollars ($10) per year and expires on June 30 of each year. Any licensed processing plant, seed labeler, seed buyer, or public agricultural seed warehouse may obtain a dealer's license without additional fee.

(2) Application for a dealer's license shall be made in a manner and on forms provided by the department. Such forms shall require among other things the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

(3) Violation of provisions of this section or the distribution of agricultural seeds not legally labeled constitutes adequate grounds for cancelling a license or denial on the part of the department to license a dealer.

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Section 5. The following acts caused within the state of Montana are prohibited:

(1) The failure or refusal to obtain a license as required in sections 2 and 4 of this act.

(2) The misbranding or mislabeling of agricultural seeds.

(3) The violation or failure to comply with rules issued under the authority of this act.

Section 6. The department is authorized to promulgate necessary rules as authorized by this act. All rules are promulgated in accordance with procedures as set forth in the Montana Administrative Procedure Act.

Section 7. (1) The department may cancel any license issued by it when the provisions of this act have been violated by the holder of the license.

(2) Any person convicted of violating the provisions of this act or rules promulgated under the authority of this act is guilty of a misdemeanor and shall be fined not less than one hundred dollars ($100) or more than three hundred dollars ($300) for the first violation, and not less than five hundred dollars ($500) or more than one thousand dollars ($1,000) for each subsequent violation.

(3) Nothing in this act shall be construed as requiring the department or its representatives to report violations of this act when it believes that the public interest will be best served by a suitable notice of warning.

(4) It is the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(5) The department is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule promulgated under the act notwithstanding the existence of other remedies at law. An injunction is issued without bond.

(6) Any person adversely affected by an act, order or ruling made pursuant to the provisions of this act may within thirty (30) days bring action in the district court of the county or any county where the alleged violation occurred, for trial of the issues bearing upon such act.

Section 8. All money collected under the provisions of this act shall be deposited to the general fund.

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Section 9. Sections 3-301, 3-302, 3-303, 3-304, 3-305, 3-306, 3-307, 3-308, and 3-309, R.C.M. 1947, are repealed.

Approved: March 23, 1973.

CHAPTER NO. 443

An Act Providing Certain Amendments and Repeals to the Workmen's Compensation Act Concerning the Extent of Coverage; Amending Sections 92-209, 92-901, 92-902, 92-1102, and 92-1121, R.C.M. 1947; and Repealing Sections 92-301 through 92-306 and 92-402 through 92-407, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 92-209, R.C.M. 1947, is amended to read as follows:

"92-209. **Employer shall make election before being bound — employee presumed to have elected.** It is the intention of this act that any employer engaged in *employments covered* herein shall, before being bound by *any* of the compensation plans herein provided, elect to be so bound thereby, and that the employee shall be presumed to have elected to be subject to and bound by the provisions of the particular plan which may have been adopted by his employer, unless such employee shall affirmatively elect not to be bound by this act, as provided in section 92-208. Provided, that an employer, after having been bound by one or the other of the three plans, may be canceled as an employer under the act, when such employer actually ceases operating and files a signed statement to that effect with the *division.* Upon such filing the *division shall* return the deposit of said employer if all premiums are paid"

Section 2. Section 92-901, R.C.M. 1947, is amended to read as follows:

"92-901. **When and how employer may elect to adopt — direct payment to employee.**

COMPENSATION PLAN NUMBER ONE

An employer *may elect to* be bound by compensation plan No. 1, upon furnishing satisfactory proof to the *division* of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are resonably likely to be incurred by him during the fiscal year for which such election is effective, may, by order of the *division,* make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act."

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Section 3. Section 92-902, R.C.M. 1947, is amended to read as follows:

"92-902. **Proof of solvency of employer electing plan No. 1 to be filed.** Every employer who *has* elected to be bound by compensation plan No. 1, shall file proof of his solvency within the time and in *the* form as may be prescribed by the rules or orders of the *division.*

The *division* may levy an assessment in an amount not to exceed three-hundredths of one *percent (.03%)* of the annual payroll of such employer in Montana, for the preceding fiscal year, which assessment shall be paid to the *division* by *the* employer at the time of filing of proof of solvency.

No assessment shall be in an amount less than two hundred dollars ($200).

If *the* employer had no payroll in Montana for the entire preceding fiscal year, the assessment shall be based on the estimated payroll for the year in which election is made.

The *division* shall pay the amounts so collected into the state treasury."

Section 4. Section 92-1102, R.C.M. 1947, is amended to read as follows:

"92-1102. **Permitting employers to elect to comply and come under the provisions of this act — classification of such employers and their employees.** *An* employer *shall* comply with the provisions of this act, in which event he *will* not be liable to respond in damages at common law or by statute for injury or death of *an* employee and shall enjoy the benefits and privileges of this act. The employee of *the* employer *is considered* to come under the provisions of this act unless *the* employee *executes* and *files* with the *division* on proper *forms* to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until *the* election is withdrawn.

Section 5. Section 92-1121, R.C.M. 1947, is amended to read as follows:

"92-1121. **What included in computing compensation in employment.** In computing the payroll, the entire compensation received by every workman employed *under* this act, shall be included, whether it be in the form of salary, wage, piecework, or otherwise, and whether payable in money, board or otherwise."

Section 6. Sections 92-301 through 92-306 and 92-402 through 92-407, R.C.M. 1947, are repealed.

Approved: March 23, 1973.

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CHAPTER NO. 444

An Act Providing for a Definition of "Wages" in the Workmen's Compensation Act; and Repealing Section 92-423, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-423.1, R.C.M. 1947, which reads as follows:

92-423.1. **Wages defined.** "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week and overtime is not to be considered.

Sick leave benefits accrued by employees of "public corporations" as defined by section 92-434 are considered "wages".

Section 2. Section 92-423, R.C.M. 1947, is repealed.

Approved: March 23, 1973.

CHAPTER NO. 445

An Act Providing for a Definition of "Average Weekly Wage" in the Workmen's Compensation Act; and Repealing Section 92-422, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-423.2, R.C.M. 1947, which reads as follows:

92-423.2. **Average weekly wage defined.** "Average weekly wage" means the mean weekly earnings of all employees under covered employment as defined and established annually by the division of employment security of the Montana department of labor and industry. It is established at the nearest whole dollar ($1) number and shall be adopted by the division of workmen's compensation prior to July 1 of each year.

Section 2. Section 92-422, R.C.M. 1947, is repealed.

Approved: March 23, 1973.

CHAPTER NO. 446

An Act Amending Section 32-2805, R.C.M. 1947, Increasing Payment to County Surveyors and Members of County Boards of

Commissioners to Thirty-three Dollars ($33) Per Day for Inspecting Roads and Construction Work.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 32-2805, R.C.M. 1947, is amended to read as follows:

"32-2805. **Inspection of roads and construction work — compensation.** (1) The board may direct the county surveyor or some member or members of the board to inspect the condition of any road. It may direct such persons to inspect any work, being done under contract or otherwise, which is under the direction, supervision, or control of the board. Such inspections may be made before any work is commenced, during its progress, or after completion and before payment.

(2) The person or persons making such inspections shall receive the sum of *thirty-three dollars ($33)* per day and actual expenses *if he receives no other compensation for that day and is not on an annual salary.* The claims shall be audited and allowed in the same manner as other claims against the county.

(3) Proper minute entries of such inspections must be made by the surveyor or board member or members at the next regular meeting of the board."

Approved: March 23, 1973.

CHAPTER NO. 447

An Act to Amend Sections 27-216, 27-221, 27-225 and 27-227, R.C.M. 1947, by including Seed with those items to which Pesticides are Applied; to Make the Act Applicable to Public Utility Applicators; to Set Dealer's or Retailer's License Fee at Five Dollars ($5) when Applied for by an Applicator; to Require Separate Dealer's License for each Outlet from which Pesticides are Obtained; to Provide that Licensed Veterinarians and Pharmacists need not be Required to Purchase License to Sell Pesticides; to Set License Fee of Five Dollars ($5) for Retailers Selling only Human Insect Repellent; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 27-216, R.C.M. 1947, is amended to read as follows:

"27-216. **Definitions.** For the purpose of this act unless the context clearly indicates otherwise:

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(1) "Active ingredient" means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.

(b) In the case of a plant regulator, an ingredient which acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or the produce thereof.

(c) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(d) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" shall apply to any pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the article has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(4) "Applicator" means any person who applies pesticides by any method.

(a) "Commercial applicator" means any person who, in this state, by contract or for hire applies by aerial, ground, or hand equipment pesticides to any land, plants, *seed,* animals, waters, structures, or vehicles.

(b) "Commercial operator" means any person who applies pesticides under the supervision of a commercial applicator.

(c) "Farm applicator" means a person applying pesticides to his own crops or land.

(d) "Home, yard, garden, home orchard, trees or lawn applicator" means a person applying pesticides to his own home, yard, garden, home orchard, trees or lawn.

(e) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(5) "Beneficial insects" means those insects which, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation or which act as parasites and predators on other insects, or are otherwise beneficial.

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(6) "Commissioner" means the commissioner of agriculture.

(7) "Crop" means a food intended for human or animal consumption or any fiber product.

(8) "Dealer" means any person who sells, wholesales, offers, or exposes for sale, exchanges, barters, or gives away within this state any pesticide except those pesticides which are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes and lawn.

(9) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(10) "Department of agriculture" means the Montana state department of agriculture.

(11) "Department of health" means the Montana state department of health.

(12) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(13) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests but not equipment used for the application of pesticides.

(14) "Environment" means the soil, air, water, plants, and animals.

(15) "Equipment" means any equipment or combination of equipment used in the actual application of pesticides, including such types of equipment as aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living man or other animals.

(17) "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungus.

(18) "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

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(19) "Inert ingredient" means an ingredient which is not an active ingredient.

(20) "Ingredient statement" means either:

(a) A statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) A statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the pesticide, (except section 4 (20) (a) [subdivision (20) (a) of this section] shall apply if the preparation is highly toxic to man, determined as provided in section 22 [27-234] of this act); and, in addition to section 4 (20) (a) or (b) [subdivision (20) (a) or (b) of this section] in case the pesticide contains arsenic in any form, a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(21) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, as, for example beetles, bugs, wasps, flies, and keds, and to other classes of anthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(22) "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(23) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide or device.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide or device or any of its containers or wrappers.

(b) Accompanying the pesticide or device at any time.

(c) To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate nonmisleading reference is made to current official publications of the United States environmental protection agency, departments of agriculture, interior, or health, education and welfare, state experiment stations, state agricultural colleges, or other similar federal

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institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(25) "Misbranded" shall apply:

(a) To any pesticides or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

(b) To any pesticide:

(i) If it is an imitation of or is offered for sale under the name of another pesticide.

(ii) If its labeling bears any reference to registration under this act.

(iii) If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public.

(iv) If the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man or undue hazard to the environment.

(v) If the label does not bear on ingredient statement on that part of the immediate container and on the outside or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase.

(vi) If any word, statement, or other information required by or under the authority of this act to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(vii) If, in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living men or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.

(viii) In the case of a plant regulator, defoliant, or desiccant which, when used as directed, is injurious to living man or other vertebrate animals or vegetation to which it is applied, or to the person applying such pesticide. Physical or physiological effects on plants or parts thereof are not deemed to be injurious when

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this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematodes, that it, unsegmented round worms with elongated, fusiform or sac-like bodies covered with cuticle, and inhabiting soil, water, animals, plants, or plant parts; may also be called nemas or eelworms.

(28) "Official sample" means any sample of pesticide or device taken by the department of agriculture or its authorized representative.

(29) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, or body politic, or any organized group of persons whether incorporated or not; and includes any trustee, receiver, assignee, or similar representative thereof.

(30) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest of which the commissioner may declare to be a pest.

(31) "Pesticide" means:

(a) Any substance or mixture of substances, including any living organisms or any product derived therefrom, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, that may infect, or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department of agriculture may declare to be a pest;

(b) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and,

(c) Any other substance intended for such use as may be named by the department of agriculture by regulation after calling a public hearing for such purpose.

(32) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or

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for otherwise altering physiological condition of plants, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plants inoculants, and soil amendments.

(33) "Registrant" means the persons registering any pesticide or device pursuant to the provisions of this act.

(34) "Restricted use pesticide" means any pesticide, including highly toxic pesticides, which the department of agriculture has found and determined, subsequent to a hearing, to be injurious when used in accordance with registration, label, directions and cautions to persons, beneficial insects, animals, crops or the environment other than the pests it is intended to prevent, destroy, control or mitigate.

(35) "Retailer" means any person who sells, offers, or exposes for sale, exchanges, barters, or gives away within this state any pesticide for home, yard, lawn and garden use, in quantities or concentrations as determined by the department of agriculture.

(6) "Rodenticides" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animals.

(37) "Weed" means any plant or part thereof which grows where not wanted."

Section 2. Section 27-221, R.C.M. 1947, is amended to read as follows:

"27-221. **Commercial applicator.** *(1)* It shall be unlawful for any person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. The application shall be accompanied by a fee of ten dollars ($10). *Applicators applying for a dealer or retailer license under this act shall be required to pay only a five dollar ($5) licensing fee for the dealer or retailer license.* The provisions of this section shall not apply to any persons employed only to operate any equipment used for the application of any pesticide, and in which the person has no financial interest or other control over such apparatus other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators shall be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed, except as provided for under section 27-223.

(3) Veterinarians licensed as provided in section 66-2204 shall not be required to be licensed to apply pesticides, provided that these

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veterinarians shall register with the department of agriculture each year; provided further that the veterinarians shall be required to meet all other requirements and regulations of the Montana Pesticides Act. The department when adopting regulations shall consider the professional licensing requirements for veterinarians."

Section 3. Section 27-225, R.C.M. 1947, is amended to read as follows:

"27-225. **Dealers.** (1) It is unlawful for a dealer to sell, deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion thereof. *A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen, employed directly out of the same location or outlet and under a licensed dealer, shall not be required to obtain a license.*

(2) The dealer shall furnish the department of agriculture the names and addresses of its fieldmen and salesmen selling pesticides within the state. The application for a license shall be accompanied by a fee of ten dollars ($10).

(3) The dealer shall require the purchaser of any restricted pesticide to exhibit their license or permit issued under authority of this act before completing a sale.

(4) Licensed dealers shall not be required to obtain a retail noncommercial license or pay the fee; however, all other provisions of section 15 [27-227] shall apply.

(5) Pharmacists and veterinarians, licensed as provided for in section 66-1506, 66-1507 and section 66-2204, and certified pharmacies licensed under section 66-1508(b), shall not be required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians shall register with the department of agriculture each year. However, the certified pharmacies and veterinarians shall be required to meet all other requirements concerning the commercial sale of pesticides. The department when adopting regulations shall take into account the professional licensing requirements of pharmacists, certified pharmacies and veterinarians."

Section 4. Section 27-227, R.C.M. 1947, is amended to read as follows:

"27-227. **Retail noncommercial sale of pesticides.** (1) The department of agriculture is authorized to designate the pesticides that may be sold in this state at retail for home, yard, garden, and lawn use. Only pesticides so designated may be sold at retail. The department of agriculture may also limit the retail sale of such

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designated pesticides to quantities up to a specific number of pound(s) or gallon(s) and of such concentrations as would be sublethal to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(2) Each pesticide retail outlet shall be required to obtain an annual license from the department of agriculture for purchasing and selling retail pesticides. The application for a license shall be accompanied by a minimum fee of ten dollars ($10), *provided, that retailers selling only human insect repellents shall only be required to pay a license fee of five dollars ($5).*"

Section 5. This act is effective on its passage and approval.

Approved: March 23, 1973.

CHAPTER NO. 448

An Act to Revise Chapter 52 of Title 69 by Broadening the Provisions of and Redefining the Terms Used Under the Section of Chapter Entitled "Definitions"; Providing a New Section in the Chapter with Respect to Unlawful Use of Term in Connection with Name, Signs and Advertisements of Facilities; Revising the Provisions for Making Rules; and Amending Sections 69-5201 and 69-5213, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 69-5201, R.C.M. 1947 is amended to read as follows:

"69-5201. **Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

(1) "Hospital" means any health care facility licensed by the department of health and environmental sciences to provide, by or under the supervision of licensed physicians, services for medical diagnoses, treatment, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care. A health care facility in order to be licensed as a hospital must have an organized medical staff; shall provide twenty-four (24) hours nursing care by licensed professional nurses and shall be in compliance with the regulations for licensed hospitals as promulgated and adopted by the state department of health and environmental sciences.

(2) "Hospital related facility" means a facility licensed by the department of health and environmental sciences to provide any or all of the following: diagnosis; treatment; medical or nurs-

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ing care or medically related rehabilitation services. Such facilities include, but are not limited to, outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, infirmaries, mental health and mental retardation institutions, alcohol and drug dependency centers and half-way houses. A health care facility in order to be licensed as a "hospital related facility" shall be in compliance with the regulations, for the specific category of facility, as promulgated and adopted by the state department of health and environmental sciences.

(a) "Out patient facility" means a place, located in or apart from a hospital, which provides to amulatory patients not requiring hospitalization the services of persons licensed to practice medicine or dentistry in the state of Montana, and which makes provisions for its patients to receive a reasonably full range of physical or mental diagnostic and treatment services.

(i) "Outpatient facility-A" is operated as an organizational component of a hospital and may establish observation beds. "Observation beds" are those beds established for use by an outpatient recovering from minor surgery or other treatment and will be occupied for a period of time not in excess of six (6) hours.

(ii) "Outpatient facility-B" is operated apart from a hospital and may not include observation beds.

(b) "Public health centers" means a publicly owned facility uitilized by a local health unit for the provision of public health services, including related public facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(c) "Rehabilitation facility" means a facility providing community service which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program under competent professional supervision including: medical services and evaluation; and psychological, social and vocational services and evaluation.

(d) "Long-term care facility" means a place which provides skilled nursing care to a total of two (2) or more persons or personal care to more than two (2) persons, who by reason of illness or disability are unable to properly care for themselves and are not related to the owner or administrator by blood or marriage, and may be defined as follows:

(i) "Skilled nursing facilities" are esablishments furnishing continuous skilled nursing care and related services twenty-four (24) hours a day.

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(ii) "Intermediate care facilities-A" are establishments furnishing limited skilled nursing care and personal care.

(iii) "Intermediate care facilities-B" are establishments providing only personal care and services to residents.

(iv) "Combination facilities" are establishments providing two (2) or more of the following services: skilled nursing care and intermediate care- A and or B.

(v) Hotels, motels, boarding houses, rooming houses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not considered to be long-term care facilities.

(e) "Infirmary" means a facility located in a university, college, government institution, or industry, for the treatment of the sick or injured.

(i) "Infirmary-A" provides outpatient and inpatient care.

(ii) "Infirmary-B" provides outpatient care only.

(3) "Person" means any individual, firm, partnership, association or corporation, or governmental unit.

(4) "Governmental unit" means the state, a state agency, any county, municipality, political subdivision of the state or an agency of any political subdivision.

(5) "Resident" means a person who is in a long-term care facility as a patient or for personal care.

(6) "Health care facility" means a hospital, hospital related facility or long-term care facility.

Section 2. There is a new section to be numbered 69-5203.1, R.C.M. 1947, which reads as follows:

69-5203.1. Unlawful use of term "nursing." It is unlawful for any facility, operating in this state, to use the word "nursing" in its name, signs, advertising, etc., unless that facility does, in fact, provide twenty-four (24) hour nursing care by licensed nurses.

Section 3. Section 69-5213, R.C.M. 1947, is amended to read as follows:

"69-5213. *Rules and standards for hospitals and hospital related facilities—adoption and publication by the department of health and environmental sciences. (1) The department shall promulgate, adopt and publish rules and minimum standards for licensure of all hospitals and hospital related facilities.*

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(2) Rules relating to building, equipment and fire and life safety shall be covered by the state building code."

Approved: March 23, 1973.

CHAPTER NO. 449

An Act Amending Section 84-2207, R.C.M. 1947, to Allow Sixty (60) Days for Filing Crude Oil Production and License Tax Statements and for Payment of the Tax; to Provide that the Statement and Tax Be Sent to the Department of Revenue Rather than the State Treasurer; to Provide that Overpayment of the Tax Be Applied as a Credit or Refund; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-2207, R.C.M. 1947, is amended to read as follows:

"84-2207. **Statement to accompany payment—records—collection of tax—refunds.** (1)Each and every person must, within thirty days after the quarter ending March 31, 1923, and within **sixty (60)** days after the end of each following quarter, make out on forms prescribed by the *department of revenue* a statement showing the total number of barrels of merchantable or marketable petroleum, and other mineral or crude oil produced or extracted by such person in the state of Montana during each month of such quarter and during the whole quarter, the average value thereof during each month and the total value thereof for the whole quarter, together with the total amount due to the state as license taxes for such quarter; and must, within such *sixty (60)* days *deliver such statement and pay to the department of revenue* the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in carrying on such business at more than one place in this state, or owning, leasing, controlling, or operating more than one oil well in this state, may include all thereof in one statement. The *department of revenue* shall receive and file all such statements and collect and receive from such person making and filing a statement the amount of tax payable by such person, if any, as the same shall appear from the face of the statement.

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(2) It shall be the duty of the *department of revenue* to examine each of such statements and compute the taxes thereon, and the amount so computed by the *department of revenue* shall be the taxes imposed, assessed against and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the *department of revenue* within ten *(10)* days after written notice of the amount of the deficiency shall be mailed by the *department of revenue* to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be *applied as a credit against tax liability for subsequent quarters, or refunded if there is no subsequent tax liability.*"

Section 2. This act is effective on its passage and approval.

Approved: March 23, 1973.

CHAPTER NO. 450

An Act Amending Section 84-4914, R.C.M. 1947, to Establish New Gross Income Standards for Determining Liability to File Returns; and to Provide Requirements for Filing Returns by Nonresidents; and Providing Effective Dates.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-4914, R.C.M. 1947, is amended to read as follows:

"84-4914. **Returns and payment of tax—penalty and interest—refunds—credits.** (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of *more than six hundred sixty-five dollars ($665),* and married individuals not filing separate returns and having a combined gross income for the taxable year of *more than one thousand three hundred thirty dollars ($1,330),* shall be liable for a return to be filed on such forms and according to such rules and regulations as the board of equalization may prescribe. *The gross income amounts referred to in the preceding sentence shall be increased by six hundred dollars ($600) for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under section 84-4910(c) and (d). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of section*

84-4910 (b), (c) and (d), as prorated according to paragraph (i) of said section.

(2) In accordance with instructions set forth by the board, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouse may not file separate returns after the time for filing the return of either has expired, unless the board so consents.

(3) If any such taxpayer is unable to make to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including, but not limited to those subject to the provisions of sections 84-4939 and 84-4943, shall compute the amount of income tax payable and shall at the time of filing the return required by this act, pay to the board any balance of income tax remaining unpaid after crediting the amount withheld as provided by section 84-4943, and/or any payment made by reason of an estimated tax return provided for in section 84-4939; provided however, the tax so computed is greater by one dollar ($1) than the amount withheld and/or paid by estimated return as provided in this act.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than one dollar ($1) the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the board shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the board within thirty (30) days after notice of the amount of the tax as computed with interest added at the rate of nine per centum (9%) per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within thirty (30) days after the first notice of the amount is mailed to the taxpayer.

If payment is not made within thirty (30) days or if the understatement is due to negligence on the part of the taxpayer, but without fraud, there shall be added to the amount of the

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deficiency five per centum (5%) thereof, provided, however, that no deficiency penalty shall be less than two dollars ($2). Interest will be computed at the rate of nine per centum (9%) per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in the subdivision, the interest shall in all cases be computed from the date the return and tax was orginally due (as distinguished from the due date as it may have been extended) to the date of payment.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of nine per centum (9%) per annum from the time when the return was originally required to be filed to the time of payment."

Section 2. This act shall be effective for all taxable years ending on and after December 31, 1972.

Section 3. This act shall be effective upon its passage and approval.

Approved: March 23, 1973.

CHAPTER NO. 451

An Act to Provide for the Establishment of Requirements on Milk for Manufacturing Purposes and its Production and Processing, Known as the "Manufactured Dairy Products Act"; Repealing Section 3-24-112, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Licenses and schedule of license fees. Licenses and license fees required under this act are as follows:

(1) Manufactured dairy products plant $50
However, a plant license is not required of a food service establishment licensed by the Montana department of health and environmental sciences as defined in section 27-612; and no license is required to manufacture nondairy products when only such products are manufactured.

(2) Cream station..... $5
However, a license is not required if the cream station is owned and operated by a licensed plant; but the milk and cream, equipment, premise and means of transporting milk or cream is subject to offical inspection.

(3) Dairy producing milk for manufacturing purposes.....$5
However, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in

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the form in which it is originally produced as required by section 46-232.

(4) Grader-weigher-sampler..... $5
(5) Tester..... $10
(6) Hauler..... $5

However, a separate grader-weigher-sampler, tester and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant or is self-employed.

A license is valid on the date issued through December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date of December 31. A license renewal application form may be supplied by the department. When the license renewal application form is returned to the department, it shall be accompanied by the correct license fee. A license shall be posted in conspicuous view at the place of business. A license is not transferable from place to place nor from person to person. A penalty of five dollars ($5) per month, or fraction of a month, after January 31 may be imposed by the department on a person who fails to apply for renewal of his license if under the act that person is required to be licensed.

All license fees collected shall be deposited in the general fund.

Section 2. Section 3-24-112, R.C.M. 1947, is repealed.

Approved: March 23, 1973.

CHAPTER NO. 452

An Act Providing for the Appropriation and Use of Surface and Groundwater; Providing a Procedure for the Determination and Confirmation of Existing Water Rights; Establishing a System of Centralized Records of All Water Rights; Repealing Sections 89-121 through 89-123, 89-801 through 89-804, 89-807 through 89-816, 89-829 through 89-842, 89-844 and 89-845, 89-847 through 89-855, 89-857 through 89-864, 89-2912, 89-2913, 89-2919 through 89-2925, and 89-2935, R.C.M. 1947; Amending Sections 89-1001, 89-2911, 89-2915, 89-2917, and 89-2918, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Short Title. This act shall be known and may be cited as the "Montana Water Use Act."

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Section 2. Declaration of policy and purpose. (1) Pursuant to article IX of the Montana constitution, the legislature declares that any use of water is a public use, and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this act.

(2) A purpose of this act is to implement article IX, section 3(4) of the Montana constitution, which requires that the legislature provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights. The legislature declares that this system of centralized records recognizing and establishing all water rights is essential for the documentation, protection, preservation and future beneficial use and development of Montana's water for the state and its citizens, and for the continued development and completion of the comprehensive state water plan.

(3) It is the policy of this state and a purpose of this act to encourage the wise use of the state's water resources by making them available for appropriation consistent with this act, and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities which store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana, for the stabilization of stream flows, and for groundwater recharge.

(4) Pursuant to article IX, section 3(4) of the Montana constitution, it is further the policy of this state and a purpose of this act to recognize and confirm all existng rights to the use of any waters for any useful or beneficial purpose.

Section 3. Definitions. Unless the context requires otherwise, in this act:

(1) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurance, including geothermal water.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrgation, mining, municipal, power, and recreational uses.

(3) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water, or in

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the case of a public agency to reserve water in accordance with section 26.

(4) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to the effective date of this act.

(5) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(6) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or through which it flows under natural pressures or is artificially withdrawn.

(7) "Permit" means the permit to appropriate issued by the department under sections 16 through 23.

(8) "Certificate" means the certificate of water right issued by the department under sections 15, 16(4), and 24.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8.

(10) "Waste" means the unreasonable loss of water through the design or neglect operation of an appropriation or water distribution facility, or the application of water to anything but a beneficial use.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

(12) "Department" means the department of natural resources and conservation provided for in title 82A, chapter 15.

(13) "Director" means the director of natural resources and conservation, a position provided for in section 82A-1510.

(14) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

Section 4. Powers and duties of department. (1) The department shall:

(a) enforce and administer this act and rules adopted by the board under section 5;

(b) prescribe procedures, forms, and reguirements for applications, permits, certificates, declarations, and proceedings under this act, and prescribe the information to be contained in

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any application, declaration or other document to be filed with the department under this act;

(c) keep in its Helena office a centralized public record of permits, certificates, declarations, applications, and other documents filed in its office under this act;

(d) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this act;

(e) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with the department under this act.

(2) The department may:

(a) enter into agreements with federal, state, or local agencies necessary to carry out this act;

(b) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other public or private source for the purposes of this act.

Section 5. Powers and duties of board. (1) The board may prescribe fees or service charges for any public service rendered by the department under this act or under title 89, chapter 29, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for the filing of declarations or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this act. These rules may include, but are not limited to, rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this act to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator or appropriation facilities to report to the department the readings of measuring devices at reasonable intervals, and to file reports on appropriations;

(d) regulate the construction, use and sealing of wells to prevent the waste, contamination or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

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Section 6. Determination of existing rights. (1) The department shall establish a centralized record system of all existing rights, and the department shall, as soon as practicable, begin proceedings under this act to determine existing rights. To accomplish this, the department shall gather data essential to the proper understanding and determination of those existing rights.

(2) The department may select and specify areas or sources where the need for a determination of existing rights is most urgent, and first begin proceedings under this act to determine the existing rights in those areas or sources.

Section 7. Data for determination of existing rights. The data gathered by the department for the determination of existing rights shall include, but are not limited to:

(1) court decrees adjudicating water rights in a proceeding commenced prior to the effective date of this act. Upon request of the department, the clerks of the district courts shall furnish the department copies of all decrees affecting water rights;

(2) declaration of existing rights filed under section 8;

(3) records of rights acquired under the groundwater code (sections 89-2911 through 89-2936);

(4) notices of appropriation filed under sections 89-801.2 and 89-810;

(5) records of declaration filed under sections 89-121 and 89-813;

(6) records of statements filed under section 89-907;

(7) the findings of water resource surveys conducted by the department and its predecessor agencies;

(8) the findings of inspections, surveys, reconnaissance, and investigations of the area or source involved as the department makes.

Section 8. Declarations of existing rights. (1) The department shall make an order requiring each person claiming an existing right within a specified area or from a specified source to file a declaration of existing right within one (1) year after the effective date of the order. The department shall publish notice of the order once a week for four (4) consecutive weeks prior to its effective date in a newspaper of general circulation in the affected area. Before the last date of publication, the department shall also serve a copy of the order by certified mail upon each appropriator or his successor in interest within the specified area

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or from the specified source who has requested mailed notice of the order or of whom the department can readily obtain knowledge, and to each person owning or being possessed of lands bordering on the stream or source as ascertained from the land ownership records of the appropriate county. The department shall file in its records proof of service of the notice by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(2) A declaration shall be made under oath by each person claiming an existing right to use water within the specified area or from the specified source on a form provided by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The information required by the department may include, but is not limited to, the date of appropriation, the date the water was first applied to a beneficial use, the amount of water appropriated, the purpose of the appropriation, the place and means of diversion, the place of use, the time during which the water is diverted and used each year, and a true copy or the docket number of any judicial decree, notice, or other claim or evidence upon which the existing right was initiated or is based.

(3) Declarations shall be sent to the department by certified mail, with a return receipt requested. The return receipt is conclusive evidence of receipt, by the department, of the declaration.

Section 9. **Filing of petition.** (1) The department shall, within a reasonable time after gathering all data necessary under section 7 of this act, file a petition for determination of existing rights in the source or area specified in the order made under section 8. The department shall file the petition in the district court of the judicial district in which the source or area is located.

(2) If the source or area is in two (2) or more judicial districts, the department shall notify the district court of each of the judicial districts of its intent to file the petition. Within thirty (30) days of receipt of the notice, the judges of those district courts shall agree on which district judge shall hear the petition and shall notify the department of their decision. If the district judges fail to agree or to notify the department, the department shall file the petition in the district court of the judicial district in which the greatest number of persons named in the petition reside.

Section 10. **Contents of petition.** (1) The petition shall state the names of all persons who have filed declarations under section 8 of this act and of all other persons who appear from the

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data gathered by the department to have existing rights to the use of waters within the specified area or from the specified source.

(2) The department shall file with the petition all data gathered under section 7 of this act.

(3) If the district court determines that additional data is necessary prior to issuing the preliminary decree in order to determine the extent of an existing right, it may direct the department or the person claiming the right to obtain the necessary data.

Section 11. **Preliminary decree.** (1) Within a reasonable time after the filing of a petition for determination of existing rights, the court shall issue a preliminary decree. The preliminary decree shall be based on the data submitted with the petition and on any additional data obtained by the court.

(2) The preliminary decree shall contain the information, and make the determinations, findings, and conclusions, required for the final decree under section 13 of this act.

(3) The district court shall send a copy of the preliminary decree by certified mail with return receipt requested to the department and to each person named in the petition filed under section 9 of this act or named in the preliminary decree. The return receipt shall be appended to the preliminary decree. The costs of mailing the copies shall be paid by the department.

(4) A person named in the petition or in the preliminary decree may inspect the data upon which the decree is based at any time, and he may purchase copies of any of the data.

Section 12. **Hearing on preliminary decree.** (1) The department or a person named in the petition filed under section 9 of this act or named in the preliminary decree, or any other person for good cause shown, who objects to the preliminary decree is entitled to a hearing thereon before the district court.

(2) A request for a hearing shall be filed with the district court, and a copy served on the department by certified mail, within ninety (90) days after receipt of the preliminary decree. The district court shall, for good cause shown, reasonably extend this time limit if application for the extension is made within ninety (90) days after receipt of the preliminary decree. A person requesting a hearing on his objections to the preliminary decree shall also serve, by certified mail with return receipt requested, a copy of his request on any person whose rights or priorities will be affected if the objections are sustained in the hear-

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ing. The rights and priorities of a person who is not served shall not be affected by the result of the hearing.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions, in the preliminary decree, with which the person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based. The request shall also state the names of all other persons on whom it is served.

(4) If more than one person requests a hearing on objections to the preliminary decree, the court may in its discretion hold a single hearing. Each hearing shall be conducted as are other civil actions, but the parties to the hearing may by agreement and with the court's permission waive any of the procedural or evidentiary rules, or may submit only written evidence. Only evidence which is referred to in a request may be introduced in a hearing.

(5) In each hearing, the department shall be a party and is entitled to be heard on objections made by any person. The department shall be granted adequate time, prior to a hearing, to gather evidence pertinent to any objection to be heard in the hearing.

Section 13. **Final decree.** (1) The court shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the court shall enter it as the final decree.

(2) The final decree shall establish the existing rights and priorities, of the persons named in the petition, for the source or area under consideration.

(3) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person named in the decree are based.

(4) For each person who is found to have an existing right, the final decree shall state:

(a) the name and post office address of the owner of the right;

(b) the amount of water included in the right;

(c) the date of priority of the right;

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(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the approximate time during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(5) The final decree in each existing right determination is final and conclusive as to all existing rights in the source or area under consideration. After the final decree there shall be no existing rights to water in the area or source under consideration except as stated in the decree.

Section 14. **Appeals from final decree.** (1) A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(a) he requested a hearing and appeared and entered objections to the preliminary decree; or

(b) his rights as determined in the preliminary decree were altered as the result of a hearing, at which he appeared, requested by another person.

(2) An appeal from the final decree shall be taken as provided by the Montana Rules of Appellate Civil Procedure.

Section 15. **Certificate of water right.** When a final decree is entered, the court shall send a copy to the department. The department shall, on the basis of the final decree, issue to each person decreed an existing right a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.

Section 16. **Right to appropriate — application for permit.** (1) After the effective date of this act, a person may not appropriate water except as provided in this act. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse

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use, adverse possession, prescription or estoppel; the method prescribed by this act is exclusive.

(2) Except as otherwise provided in subsection (4) of this section, a person may appropriate water only by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed and refiled with the department within thirty (30) days after its return to the applicant, or within a further time as the department may allow.

(3) A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right, to an appropriation obtained under a provisional permit, by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action, where the permit would have been denied or modified if the final decree had been available to the department.

(4) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater for domestic, agricultural, or livestock purposes by means of a well with a maximum yield of less than one hundred (100) gallons a minute. Within sixty (60) days of completion of the well, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerks and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(5) Persons required to file well logs and other information under the laws governing the conservation of oil and gas and who do so in compliance with those laws, shall be considered to have complied with all of the filing requirements of this act to

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the extent it applies to wells subject to those laws. The date of appropriation shall be the date that written notice of intention to drill is given to the board of oil and gas conservation. A person who desires to convert a nonproductive oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act.

(6) A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 5 of this act.

Section 17. **Notice of application.** (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for three (3) consecutive weeks. Before the last date of publication, the department shall also serve the notice by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under section 26. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than thirty (30) days nor more than sixty (60) days after the last date of publication) persons may file with the department written objections to the application.

Section 18. **Ojections.** (1) An objection to an application must be filed by the date specified by the department under section 17(2).

(2) The objection must state the name and address of the objector, and facts tending to show that there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, rights, or interests of the objector would be adversely affected by the proposed appropriation, or the objector may state any other objections to the proposed appropriation he considers pertinent.

Section 19. **Hearings on objections.** If the department determines that an objection to an application for a permit states a valid

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objection to the issuance of the permit, it shall hold a public hearing on the objection within sixty (60) days from the date set by the department for the filing of objections, after serving notice of the hearing by certified mail upon the applicant and the objector. The department may consolidate hearings if more than one (1) objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

Section 20. **Action on application.** (1) The department shall grant, deny, or condition an application for a permit in whole or in part within one hundred twenty (120) days after the last date of publication of the notice of application if no hearing is held, and within one hundred eighty (180) days if a hearing is held.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department, nor denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application, but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions or limitations specified by it, or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within thirty (30) days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner, or denied, unless a hearing is requested.

Section 21. Criteria for issuance of permit. The department shall issue a permit if:

(1) there are unappropriated waters in the source of supply;

(2) the rights of a prior appropriator will not be adversely affected;

(3) the proposed means of diversion or construction are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

Section 22. **Terms of permit.** (1) The department may issue a permit for less than the amount of water requested, but in no

case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. It may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this act.

(2) The department may limit the time for commencement of the appropriation works, completion of construction and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. For good cause shown by the permittee, the department may in its discretion reasonably extend time limits.

(3) The original of the permit shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation, and a copy shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the permit to the permittee.

Section 23. **Revocation of permit.** If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof, or if the water is not being applied to the beneficial use contemplated in the permit, or if the permit is otherwise not being followed, the department may after notice require the permittee to show cause why the permit should not be revoked. If the permittee fails to show sufficient cause, the department may revoke the permit.

Section 24. **Certificate of water right.** (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder in the county wherein the point of diversion or place of use is located for recordation, and a duplicate shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator.

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(2) Except as provided in section 16 (4) of this act, a certificate of water right in a particular source may not be issued prior to a general determination under this act of existing rights in that source.

Section 25. **Reservoirs.** A person intending to appropriate water by means of a reservoir shall apply for a permit as prescribed in this act.

Section 26. **Reservation of waters.** (1) The state or any political subdivision or agency thereof, or the United States or any agency thereof, may apply to the board to reserve waters for existing or future beneficial uses, or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with sections 17 through 19. After the hearing provided in section 19, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records, incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest. If the purpose of the reservation requires contruction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(4) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters, or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(5) A reservation under this section shall not affect any rights in existence when the order reserving waters is adopted.

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(6) The board shall, periodically but not less than every ten (10) years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke or modify the reservation.

Section 27. **Priority.** (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later approriators in the condition of water occurrence, such as the increase or decrease of streamflow, or the lowering of a water table, artesian pressure or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions.

(2) Priority of appropriation made under this act dates from the filing of an application for a permit with the department, except as otherwise provided in section 16 of this act.

(3) Priority of appropriation perfected before the effective date of this act shall be determined as provided in sections 6 through 15 of this act.

Section 28. **Changes in appropriation rights.** (1) An appropriator may not change the place of diversion, place of use, purpose of use or place of storage without receiving prior approval of such change from the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If a person whose rights may be affected files an objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Notice of the proposed change shall be given in accordance with section 17 of this act. Objections shall meet the requirements of section 18(2) of this act, and hearings shall be held in accordanance with section 19.

Section 29. **Transfer of appropriation right.** (1) The right to use water under a permit or certificate of water right shall pass with a conveyance of the land, or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) A copy of an instrument which transfers an interest in an appropriation right shall be filed with the department and the county, in which the point of diversion or place of use is located, by the person receiving the appropriation interest.

(3) An appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, or

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sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands, without obtaining prior approval from the department. The department shall approve the proposed transfer if the requirements of section 28(2) are met.

Section 30. **Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right, or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right, or ceases using his appropriation right according to its terms and conditions, for a period of ten (10) successive years, and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) This section does not apply to existing rights until they have been determined in accordance with this act.

Section 31. **Procedure for declaring appropriation rights abandoned.** (1) When the department has reason to believe that an appropriator may have abandoned his appropriation right under section 30, or when another appropriator in the opinion of the department files a valid claim that he has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the district court which determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section shall be conducted in accordance with the Montana Rules of Civil Procedure, and appeal shall be taken in accordance with the Montana Rules of Appellate Civil Procedure.

(2) At the hearing, the burden of proof shall be on the department which must establish by a preponderance of the evidence that the appropriation has been abandoned under section 30 of this act.

(3) The determination of the court shall be appended to the final decree. The department shall keep a copy of the determination in its office in Helena.

Section 32. **Supervision of water distribution.** (1) As of the effective date of this act, the district courts shall supervise the distribution of water among all appropriators. This supervisory

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authority includes the supervision of all water commissioners appointed prior to the effective date of this act. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to sections 6 through 15 of this act, the department may, in its discretion, within a reasonable time begin proceedings to determine existing rights in the source, in accordance with this act. If the department does not proceed to obtain a determination of existing rights, the district court shall settle only the controversy between the parties.

(3) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under sections 6 through 15 of this act shall be settled by the district court which issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department.

(4) The department shall be named as a party in any proceeding under this section and shall be served with process.

Section 33. **Prevention of waste.** (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same, it may petition the district court to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water, or to secure water to a person having a prior right to its use; the department may attach to the controlling works a written notice properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so, and to take such steps as may be necessary to remedy the waste, unlawful use, or interference; or

(2) The department may also direct its own attorney or re-

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quest the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, or interference.

Section 34. **Entry on land — inspections.** Any employee or agent of the department authorized by the director may enter upon any land to carry out the purpose of this act, including, but not limited to, entry to make inspections the department considers necessary of proposed works, source of water, location of the proposed use, construction of works and other inspections to ascertain whether or not persons are complying with this act. The department or its agent shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to any property.

Section 35. **Legal assistance.** (1) When requested by the department, the attorney general and the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this act. The department may also employ legal counsel to enforce this act and to conduct proceedings under it.

(2) If an appropriator who is a citizen of Montana becomes involved in a controversy to which any agency of the federal government or another state is a party, the department may in its discretion intervene as a party or provide necessary legal assistance to the citizen of Montana.

Section 36. **Hearings before board—Administrative Procedure Act.** (1) A person who is aggrieved by a final decision of the department is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act (title 82, chapter 42, R.C.M. 1947) governs administrative proceedings conducted under this act.

Section 37. **Penalties.** A person who violates or refuses or neglects to comply with sections 16(1), 28(1), and 29(3) of this act, or of any order of the department, or of any rule of the board, is guilty of a misdemeanor.

Section 38. **Deposit of fees and penalties.** All fees and penalties collected under this act shall be deposited in the state general fund. All penalties or fines imposed by any court for a violation of this act shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine.

Section 39. Section 89-1001, R.C.M. 1947, is amended to read as follows:

"89-1001. **Appointment of water commissioners — authority**

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— **compensation.** (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least fifteen per cent (15%) of the water rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners, who shall have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by *the* decree *and by any certificates and permits issued under the Montana Water Use Act* provided that when petitioners make proper showing that they are not able to obtain the application of the owners of at least fifteen per cent (15%) of the water rights affected, and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a final decree issued under the Montana Water Use Act, the judge of the district court which issued the final decree shall upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The *department of natural resources and conservation* or any person or corporation operating under contract with *the department,* or any other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.

(4) Upon the issuance of such order the water commissioner or commissioners shall have authority and it is hereby made his or their duty to admeasure and distribute to the users thereof as their interests may appear and be required, the stored and supplemental waters stored and as released by the *department of natural resources and conservation* under provisions of the state Water Conservation Act, chapter 1 of this Title, to be diverted into and through said streams, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules and regulations as decreed water rights are admeasured and distributed, and such water commissioner or commissioners and the owners and users of such stored and supplemental waters

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shall be bound by and be subject to the provisions of this chapter, and all acts amendatory thereof and supplemental thereto, provided that the admeasurements and distribution of such stored and supplemental waters shall in no way interfere with decreed water rights. The purpose of this act is to provide a uniform, equitable and economical distribution of adjudicated, stored and supplemental waters.

(5) At the time of the appointment of such water commissioner or commissioners the district court shall fix their compensation, and the owners and users of *the distributed* waters shall pay their proportionate share of such fees and compensation."

Section 40. Section 89-2911, R.C.M. 1947, is amended to read as follows:

"89-2911. **Definitions.** *Unless the context requires otherwise, in this chapter:*

(a) "Ground water" means any fresh water *beneath the land surface or beneath the bed of a stream, lake, reservoir or other body of surface water, and which is not a part of that surface water.* Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The administrator, after notice and hearing, is authorized to fix definite standards for determining fresh water in any controlled ground water area or subarea of the state.

(b) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(c) "Well" means any artificial opening or excavation in the ground, however made, by which ground water can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(d) "Beneficial use" means *a use of water for the benefit of the appropriator, other persons or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.*

(e) "Person" means *an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.*

(f) "Administrator" means the *department of natural resources and conservation provided for in title 82A, chapter 15.*

(g) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to inclose a single

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and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable. For purposes of administration, large ground water areas may be divided into convenient administrative units "known as subareas."

(h) "Board" means the board of natural resources and conservation provided for in section 82A-1509."

Section 41. Section 89-2915, R.C.M. 1947, is amended to read as follows:

"89-2915. **Limiting withdrawals — hearing and order.** *(1)* At the time set for the hearing the *board,* if *it* is satisfied that the notice of hearing has been duly published and mailed as required by section 89-2914, shall proceed to hear evidence and may consider information which *the administrator* has duly obtained under this act, and after the conclusion of the hearing shall make written findings and an order. If the *board* finds *on the basis of the hearing and other information obtained by the administrator* that the withdrawal of ground water in such area or subarea exceeds the safe annual yield of ground water as measured by the recharge of the area or subarea, *it* shall order the aggregate withdrawal of ground water from such area or subarea decreased so that it shall not exceed such annual yield. Except for domestic use, such decrease shall conform to the priority of the pertinent rights and shall prevail for the term of shortage in the available supply. The administrator shall have the authority to enforce the order; to require persons to cease such excessive withdrawals in reverse order of their priority of rights; and to bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(2) The order of the *board* shall be published and mailed by the administrator in the manner and for the length of time as prescribed by section 89-2914 for the publication and mailing of the notice of hearing except that a copy of the written findings of the *board* shall be mailed instead of a copy of the proposal, and except further, that a copy of the order together with a copy of the written findings shall be mailed to each petitioner at his last known address. Upon publication and mailing of such order, as prescribed herein, the order shall be final and conclusive unless an appeal therefrom is taken.

(3) Once a petition has been filed and an order has been made limiting the withdrawal of ground water from a particular ground water area or subarea, as provided in this section, the *board* shall have authority after notice and hearing as heretofore provided in

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this section, to modify or revoke *its* order upon a showing by any interested party and a finding by the *board* that conditions have materially changed since the prior order. While a matter is pending before the *board,* the administrator shall have discretion and authority to restrict further development of the subarea."

Section 42. Section 89-2917, R.C.M. 1947, is amended to read as follows:

"89-2917. **Scope of administrative hearing.** *(1)* In any hearing for the ascertainment and finding of priorities to the use of ground water, the administrator in *its* finding and order shall confirm, modify, alter or amend any prior order designating and modifying the boundaries of the ground water area or subarea involved, as the evidence justifies, shall determine the priority of rights and the quantity of ground water to which each appropriator, who is a party to the proceedings, shall be entitled in such particular ground water area or subarea, and shall find and determine any other matter necessary to the ascertainment of priorities of such existing rights to ground water. *It* may also determine the level below which the ground water shall not be drawn by appropriators. The administrator shall act in administering and enforcing the provisions of the order, as provided in section 89-2915.

(2) A copy of the order shall be recorded in the office of the clerk and recorder of each county in which the particular ground water area or subarea is located. If the order is not appealed, the order of the administrator shall be final and conclusive when it is published and mailed as provided for orders issued under section 89-2915."

Section 43. Section 89-2918, R.C.M. 1947, is amended to read as follows:

"89-2918. **Permit required to appropriate in controlled area.** *A person may appropriate ground water in a controlled area only by applying for and receiving a permit from the administrator in accordance with the Montana Water Use Act.* The administrator shall not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift (in the case of pumping developments) or within a reasonable or feasible reduction of pressure (in the case of artesian developments).

Section 44. There is a new section 89-2928.1, R.C.M. 1947, which reads as follows:

89-2928.1. **Well Logs.** Within sixty (60) days after any well is completed, the driller shall file with the administrator a well log report on a form provided by the administrator at its offices

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and at the offices of the county clerks and recorders. The administrator may return the report for refiling if it is incomplete or incorrect. The administrator shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology.

Section 45. There is a new section 89-2934.1, R.C.M. 1947, which reads as follows:

89-2934.1. **Hearings before board — Administrative Procedure Act.** (1) A person who is aggrieved by a final decision of the administrator under this chapter, is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act governs administrative proceedings under this chapter.

Section 46. Sections 89-121 through 89-123, 89-801 through 89-804, 89-807 through 89-816, 89-829 through 89-842, 89-844 and 89-845, 89-847 through 89-855, 89-857 through 89-864, 89-2912, 89-2913, 89-2919 through 89-2925, 89-2935, R.C.M. 1947, are repealed.

Section 47. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved: March 23, 1973.

CHAPTER NO. 453

An Act Implementing Article II, Section 29 of the 1972 Montana Constitution, by Providing for an Award Including necessary Expenses of Litigation when the private property owner prevails; Repealing Section 93-9921, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 93-9921.1, R.C.M. 1947, which reads as follows:

93-9921.1. **Necessary expenses of litigation.** The condemnor, shall within thirty (30) days after an appeal is perfected from the commissioner's award or report, submit to condemnee a written final offer of judgment for the property to be condemned, together with necessary expenses of condemnee then accrued.

If at any time prior to ten (10) days before trial, the condemnee serves written notice that the offer is accepted, either party

may then file the offer and notice of acceptance together with proof of service thereof and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer. In the event of litigation, and when the private property owner prevails, by receiving an award in excess of the final offer of the condemnor, the court shall award necessary expenses of litigation to the condemnee.

Section 2. Section 93-9921, R.C.M. 1947, is repealed.

Approved: March 24, 1973.

CHAPTER NO. 454

An Act to Revise Initiative and Referendum Administrative Requirements to Comply with the Provisions of Article III, Sections 4 and 5 of the Montana Constitution of 1972; Amending Sections 37-101 Through 37-105 and 37-107 Through 37-109, R.C.M. 1947, and Repealing Section 23-2701.1, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 37-101, R.C.M. 1947, is amended to read as follows:

"37-101. **Form of petition for referendum.** The following shall be substantially the form of petition for the referendum to the people on any act passed by the legislative assembly of the state of Montana:

Warning.

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same a *qualified elector* of this state, is punishable by a fine of not exceeding five hundred dollars ($500), or imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment.

Petition for referendum.

To the Honorable ....., Secretary of State of the state of Montana:

We, the undersigned citizens and *qualified electors* of the state of Montana, respectfully order that Senate (House) Bill Number ....., entitled (title of act), passed by the ..... legislative assembly of the state of Montana, at the regular (special) session of said

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legislative assembly, shall be referred to the people of the state for their approval or rejection, at the regular, general, or special election to be held on the ..... day of ....., 19...., and each for himself says: I have personally signed this petition; I am a *qualified elector* of the state of Montana; and my residence, post-office address, *legislative representative district number,* and voting precinct are correctly written after my name.

Name ..... Residence .....
Post-office address .....
If in city, street and number .....
Legislative representative district number .....
Voting precinct .....

(Here follow numbered lines for signatures.)''

Section 2. Section 37-102, R.C.M. 1947, is amended to read as follows:

"37-102. **Form of petition for initiative.** The following shall be substantially the form of petition for any law of the state of Montana proposed by the initiative:

Warning.

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a *qualified elector* of this state, is punishable by a fine not exceeding five hundred dollars ($500), or imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment.

Petition for Initiative.

To the Honorable ....., Secretary of State of the State of Montana:

We, the undersigned *qualified electors* of the state of Montana, respectfully demand that the following proposed law shall be submitted to the *qualified* electors of the state of Montana, for their approval or rejection, at the regular, general, or special election to be held on the ..... day of ....., 19...., and each for himself says:

I have personally signed this petition, and my residence, post-office address, *legislative representative district,* and voting precinct are correctly written after my name.

Name ..... Residence .....
Post-office address .....
If in city, street and number .....
Legislative representative district .....
Voting precinct .....

(Numbered lines for names on each sheet.)

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Every such sheet for petitioner's signature shall be attached to a full and correct copy of the title and text of the measure so proposed by initiative petition; but such petition may be filed with the secretary of state in numbered sections, for convenience in handling, and referendum petitions may be filed in sections in like manner."

Section 3. Section 37-103, R.C.M. 1947, is amended to read as follows:

"37-103. **County clerk to verify signatures.** The county clerk of each county in which any such petition shall be signed shall compare the signatures of the electors signing the same with their signatures on the registration books and blanks on file in his office, for the preceding general election, and shall thereupon attach to the sheets of said petition containing such signatures his certificate to the secretary of state, substantially as follows:

State of Montana, County of .....

To the Honorable ....., Secretary of State for Montana:

I, ..., county clerk of the county of ....., hereby certify that I have compared the signatures on (number of sheets) of the referendum (initiative) petition, attached hereto, with the signatures of said electors as they appear on the registration books and blanks in my office; and I believe that the signatures of (names of signers), numbering (number of genuine signatures *in each whole or partial legislative representative district lying within the county boundaries),* are genuine. As to the remainder of the signatures thereon, I believe that they are not genuine, for the reason that .....; and I further certify that ..... the following names (.....) do not appear on the registration books and blanks in my office.

Signed: .....

....., County Clerk.

(Seal of Office) By .....

Deputy .....

Every such certificate shall be prima facie evidence of the facts stated therein, and of the qualifications of the electors whose signatures are thus certified to be genuine, and the secretary of state shall consider and count only such signatures on such petitions as shall be so certified by said county clerks to be genuine; provided, that the secretary of state may consider and count such of the remaining signatures as may be proved to be genuine, and that the parties so signing were legally qualified to sign such petitions, and the official certificate of a notary public of the county in which the signer resides shall be required as to the fact for each of such last-named signatures; and the secretary of state shall further compare and verify the offi-

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cial signatures and seals of all notaries so certifying with their signatures and seals filed in his office. Such notaries' certificate shall be substantially in the following form:

State of Montana, ss.

County of .....

I, ..., a duly qualified and acting notary public in and for the above-named county and state, do hereby certify: that I am personally acquainted with each of the following named electors whose signatures are affixed to the annexed petition, and I know of my own knowledge that they are *qualified electors* of the state of Montana, and of the county, *legislative representative districts* and precincts written after their several names in the annexed petition, and that their residence and post-office address is correctly stated therein, to wit: (Names of such electors.)

In Testimony Whereof, I have hereunto set my hand and official seal this ..... day of ....., 19.....

Notary Public, in and for ..... County,
State of Montana.

The county clerk shall not retain in his possession any such petition, or any part thereof, for a longer period than two days for the first two hundred signatures thereon, and one additional day for each two hundred additional signatures, or fraction thereof, on the sheets presented to him, and at the expiration of such time he shall forward the same to the secretary of state, with his certificate attached thereto, as above provided. The forms herein given are not mandatory, and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical errors.''

Section 4. Section 37-104, R.C.M. 1947, is amended to read as follows:

"37-104. **Notice to governor and proclamation.** Immediately upon the filing of any such petition for the referendum or the initiative with the secretary of state, signed by the number of *electors* and filed within the time required by the constitution, he shall notify the governor in writing of the filing of such petition, and the governor shall forthwith issue his proclamation, announcing that such petition has been filed, with a brief statement of its tenor and effect. Said proclamation shall be published four times for four consecutive weeks in one daily or weekly paper in each county of the state of Montana.''

Section 5. Section 37-105, R.C.M. 1947, is amended to read as follows:

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"37-105. **Certification and numbering of measures — constitutional amendments.** The secretary of state, at the same time that he furnishes to the county clerk of the several counties certified copies of the names of the candidates for office, shall also furnish the said county clerks his certified copy of the titles and numbers of the various measures to be voted upon at the ensuing general or special election, and he shall use for each measure a title designated for that purpose by the legislative assembly, committee, or organization presenting and filing with him the act, or petition for the initiative or the referendum, or in the petition or act; provided, that such title shall in no case exceed one hundred words, and shall not resemble any such title previously filed for any measure to be submitted at that election which shall be descriptive of said measure, and he shall number such measures. All measures shall be numbered with consecutive numbers beginning with the number immediately following that on the last measure filed in the office of the secretary of state. The affirmative and negative of each measure shall bear the same number, and no two measures shall be numbered alike. It shall be the duty of the several county clerks to print said titles and numbers on the official ballot prescribed by section *23-3506,* in the numerical order in which the measures have been certified to them by the secretary of state. Measures proposed by the initiative shall be designated and distinguished from measures proposed by the legislative assembly by the heading "proposed petition for initiative."

All constitutional amendments submitted to the qualified electors of the state shall likewise be placed upon the official ballot prescribed by said section *23-3506* and no such amendment shall hereafter be submitted on a separate ballot. Nothing herein contained shall be deemed to change the existing laws of the state regulating in other respects the manner of submitting such proposed amendments."

Section 6. Section 37-107, R.C.M. 1947, is amended to read as follows:

"37-107. **Printing and distribution of measures.** The secretary of state shall furnish a copy of each of the proposed measures to be submitted to the people and make requisition on the state purchasing agent for the printing and delivery to him of all proposed constitutional amendments, initiative and referendum measures to be submitted to a vote of the people.

The state purchasing agent, shall, not later than the first Monday of the *second* month next before any general or special election, at which any proposed law is to be submitted to the people, cause to be printed a true copy of the title and text of each measure to be submitted, with the number and form in which the question will be printed on the official ballot. It shall be the duty of the state pur-

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chasing agent to call for bids and contract with the lowest responsible bidder for the printing of the proposed law to be submitted to the people.

The proposed law to be submitted shall be printed in news type, each page to be six inches wide by nine inches long, and when such proposed measure constitutes less than six pages, it shall be printed flat and forwarded to the county clerk and recorder of each of the several counties in that form.

When the proposed measure constitutes more than six pages, said measure shall be printed in pamphlet form, securely stapled, without cover. No proposed measure, hereafter, to be submitted to the people of the state, as provided for in this section shall be bound. The quality of the paper to be used for the proposed measure shall be left to the discretion of the state purchasing agent. The number of said proposed measures to be printed shall be *at least* five per cent (5%) more than the number of *qualified electors,* as shown by the registration lists of the several counties of the state at the last preceding *statewide* election.

The secretary of state shall distribute to each county clerk before the second Monday in the *second* month next preceding *the election at which the proposed measure(s) will be voted upon,* a sufficient number of said pamphlets to furnish one copy to every voter in his county. And each county clerk shall be required to mail to each registered voter in each of the several counties in the state at least one copy of the same within thirty (30) days from the date of his receipt of the same from the secretary of state. The mailing of said pamphlets to electors shall be a part of the official duty of the county clerk of each of the several counties, and his official compensation shall be full compensation for this additional service."

Section 7. Section 37-108, R.C.M. 1947, is amended to read as follows:

"37-108. **Canvass of votes.** The votes on measures and questions shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned, and the abstract made by the several county clerks of votes on measures shall be returned to the secretary of state on separate abstract sheets in the manner provided by *section 23-4015* for abstracts of votes for state officers. It shall be the duty of the state board of canvassers to proceed within thirty days after the election *at which such measures are voted upon,* and sooner if the returns be all received, to canvass the votes given for each measure, and the governor shall forthwith issue his proclamation, which shall be published in two daily newspapers printed at the capital, giving the whole number of votes cast in the state for and

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against each measure and question, and declaring such measures as are approved by a majority of those voting thereon to be in full force and effect as the law of the state of Montana from the date of said proclamation, designating such measures by their titles."

Section 8. Section 37-109, R.C.M. 1947, is amended to read as follows:

"37-109. **Who may petition — false signature — penalties.** Every person who is a qualified elector of the state of Montana may sign a petition for the referendum or for the initiative. Any person signing any name other than his own to such petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same a *qualified elector* of this state, or any officer or any person willfully violating any provision of this statute, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment, in the discretion of the court before which such conviction shall be had."

Section 9. Section 23-2701.1, R.C.M. 1947, is repealed.

Approved: March 24, 1973.

CHAPTER NO. 455

An Act to Amend the Mileage Allowance of Certain County Officials; Amending Section 16-2723, R.C.M. 1947, to Set a Mileage Allowance of Twelve Cents ($.12) per Mile for Sheriffs; And Amending Section 93-313, R.C.M. 1947, to Set a Mileage Allowance of Twelve Cents ($.12) per Mile for Traveling Expenses of District Judges.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-2723, R.C.M. 1947, is amended to read as follows:

"16-2723. **Mileage and expense of sheriff.** Sheriffs delivering prisoners at the state prison or mentally ill persons at the state hospital, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the state controller or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are

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other expense claims against the state or counties, and no other or further compensation shall be received by sheriffs for such expenses, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. While in the discharge of his duties, both civil and criminal, the sheriff shall receive *twelve cents ($.12)* per mile for each and every mile actually and necessarily traveled; and for transporting any person by order of court, except as hereinbefore provided, he shall receive *twelve cents ($.12)* additional per mile, the same to be in full for transporting and dieting of such person during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged. The county shall not be liable for, nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work."

Section 2. Section 93-313, R.C.M. 1947, is amended to read as follows:

"93-313. **Expenses of judges holding court in other counties.** Each district judge of a judicial district in this state composed of more than one county, when, for the purpose of holding court and disposing of judicial business, he goes to a county of his judicial district, other than the county in which he resides, and therein holds court or transacts judicial business, shall be paid all of his actual and necessary expenses of transportation and living, incurred on account thereof, and all expenditures made therefor, from the time he leaves his place of residence until he returns thereto. *Actual and necessary expenses of transportation incurred when a judge uses his own automobile shall be calculated at the rate of twelve cents ($.12) per mile.*"

Approved: March 24, 1973.

CHAPTER NO. 456

An Act Amending Section 82-1010, R.C.M. 1947, Requiring Publication of Only Comments or Conclusions in Cities or Towns of One Thousand (1,000) or Less Residents Instead of the Entire Examiner's Report.

Be it enacted by the Legislative Assembly of the State of Montana:

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Section 1. Section 82-1010, R.C.M. 1947, is amended to read as follows:

"82-1010. **Entering examiner's report in minutes of city or town — publication.** Upon receipt of the state examiner's report covering the examination of the affairs of any incorporated city or town, it shall be the duty of the mayor and the members of the city council or city commission to have such report entered and made a part of the minutes of the next regular meeting. Provided, further, that the state examiner shall, at the time such report of examination is forwarded to the city or town officials *and for cities and towns with more than one thousand (1,000) residents,* send a *like* copy to the official newspaper of the city or town for publication. *Provided, further, that the state examiner shall, at the time such report of examination is forwarded to the city or town officials in cities and towns with one thousand (1,000) or less, send a copy of only its general comments section to the official newspaper of the city or town for publication.* Such publication shall be published in one issue of the aforesaid official newspaper forthwith and shall be a charge against the city or town at a rate to be agreed on but not to exceed that charged boards of county commissioners for the printing of the reports of the state examiner."

Approved: March 24, 1973.

CHAPTER NO. 457

An Act Relating to Membership of the Montana Horse Racing Commission; The Terms of Office Thereon; Providing a Quorum For Transaction of Business; Amending Sections 62-501 and 62-503, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 62-501, R.C.M. 1947, is amended to read as follows:

"62-501. *Board of horse*racing **created — appointment — removal — claims.** There is hereby created the Montana *board of* horse racing, to consist of *five (5)* members, who shall be citizens, residents and qualified electors of the state of Montana. At least one (1) member shall be a breeder of *racing* horses*; one (1) member shall be a member of an independent horse racing association; and one (1) member shall be a member of a county fair board that conducts a fair featuring parimutuel betting; and two (2) members shall have occupations non-related to horseracing.*

After January 1, 1974, the governor shall appoint two (2) mem-

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bers for terms to expire in 1977 and one (1) member for a term to expire in 1976. Upon the expiration of the terms of members the governor shall appoint successors to the board for terms of three (3) years. The senate shall consent and concur in the appointments. This act does not affect the terms of office of the present board.

The governor shall not appoint any member who resides in the same county with a current member's county of residence, and the governor shall appoint members on the basis of experience, qualifications, and representative of a reasonable geographical balance throughout the state.

Each member shall hold office until his successor is appointed and qualified. Vacancies on the *board* shall be filled by appointment to be made by the governor for the unexpired term.

Any member may be removed from office by the governor for cause after a public hearing. Notice of *the* hearing shall fix the time and place of hearing and shall specify the charges. Copy of the notice of hearing shall be served on the member by mailing the same to the member at his last known address at least ten (10) days before the date fixed for *the* hearing.''

Section 2. Section 62-503, R.C.M. 1947, is amended to read as follows:

"62-503. **Chairman — quorum — costs.** The *board* shall organize by electing one (1) of its members chairman. *Three (3)* members of the *board* shall constitute a quorum for the transaction of any and all business of the *board.*

The *board* may incur all costs, charges and expenses reasonably necessary in carrying out the intent and purposes of this act.''

Approved: March 24, 1973.

CHAPTER NO. 458

An Act to Amend Sections 16-2501, 16-2502, 16-2503, 16-2505 and 16-2507, R.C.M. 1947, Deleting Reference to the 1889 Constitution and Providing for Consolidation of Offices Among Counties; Implementing Article XI, Section 3 of the 1972 Montana Constitution.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-2501, R.C.M. 1947, is amended to read as follows:

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"16-2501. **Consolidation of county offices — petitions — time for filing — contents.** At any time not later than seven (7) months before the date of any general election at which any county officers are to be elected, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of county commissioners of such county. *A written petition may also be filed with the boards of county commissioners of counties asking for consolidation of any two (2) or more offices among several counties.* Said petition shall be addressed to the board *or boards* of county commissioners of *the counties affected,* shall set forth and state the reasons why such consolidation is believed by the petitioners to be necessary, desirable or for the best interests of the *county* taxpayers, and shall be signed by not less than *fifteen percent (15%)* of the qualified electors of such county whose names appear on the registration records thereof, and each person signing such petition shall place after his name his post-office address and voting precinct. *In the case of consolidation of offices among several counties, the petition shall be signed by not less than fifteen percent (15%) of the qualified electors in each of the counties affected.*"

Section 2. There is a new section to be numbered 16-2501.1, R.C.M. 1947, which reads as follows:

16-2501.1. **Initiation of consolidation by county commissioners — procedure.** The board or boards of county commissioners may initiate the consolidation of county offices under the procedure set forth in this act. Any board or boards of county commissioners desiring to consolidate any two (2) or more offices or any two (2) or more offices among several counties under the provisions of this chapter shall first pass a resolution stating the intent of the board or boards of county commissioners to consider consolidation.

Section 3. Section 16-2502, R.C.M. 1947, is amended to read as follows:

"16-2502. **Examination of petition** — *petition and consolidation by county commissioners* — **hearing and notice.** Upon the filing of any such petition the board *or boards* of county commissioners shall cause the county clerk *or clerks* to forthwith examine the same and the registration records of the county and if, after such examination, such county clerk *or clerks* shall report to said board *or boards* of county commissioners that such petition *or petitions* has been signed by *not less than fifteen* per centum *(15%)* of the qualified electors of the county whose names appear on such registration records, said board *or boards* shall set a date for *a* hearing *to consider said consolidation. Upon the passage of the resolution of intent by the board or boards of county commissioners proper notice and a date*

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shall be set for a hearing to consider said consolidation. The date for *the* hearing shall be not more than twenty days after the filing of such petition *or the passage of the resolution of intent. The* county clerk *or clerks* shall cause notice of such hearing to be published one time in the official newspaper of the county, which publication must be at least ten days before the date set for said hearing, and if there be no newspaper of general circulation printed and published in said county, then such notice must be posted by the county clerk *or clerks,* at least ten days before the date set for such hearing, in three public places in the county *or counties.* Said notice shall *either* contain a copy of said petition, with the signatures omitted, *or a copy of the resolution of intent passed by the board or boards of county commissioners, and* shall state the time and place fixed for hearing the same, and that on such hearing any taxpayer of the county may appear and be heard in support of or in opposition to said petition."

Section 4. There is a new section to be numbered 16-2502.1, R.C.M. 1947, which reads as follows:

16-2502.1. **Joint Hearings.** Nothing herein shall prevent the boards of county commissioners in counties affected by intercounty consolidation from holding joint hearings provided the proper notice is given in each of the counties affected as set forth in section 16-2502.

Section 5. Section 16-2503, R.C.M. 1947, is amended to read as follows:

"16-2503. **Conduct of hearing.** At the time designated in said notice, the county commissioners shall proceed to hear said petition and the evidence for or against the same. Any *qualified elector* of the county *affected* shall have the right to appear and be heard upon said petition subject however to the right of the county commissioners to limit cumulative testimony and to prevent the undue prolonging of said hearing. Within five days after the date set for said hearing the board *or boards* of county commissioners shall make such order in relation to the consolidation of said offices *as they shall deem proper."*

Section 6. Section 16-2505, R.C.M. 1947, is amended to read as follows:

"16-2505. **Board's order of consolidation to be published.** Whenever a board *or boards* of county commissioners shall make an order consolidating two or more offices such order *shall be entered* in full on its minutes of proceedings and such order *shall* be published in a newspaper of general circulation printed and published in *the* county *or counties affected* for a period of *two*

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successive weeks next following the date of the making and entry of such order."

Section 7. Section 16-2507, R.C.M. 1947, is amended to read as follows:

"16-2507. **Salary and bond of officer upon consolidation.** When two or more offices are consolidated under a single officer such officer shall receive as salary an amount to be determined by the board *or boards* of county commissioners, but which amount must not be more than twenty per cent (20%) higher than the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidations; provided that the board *or boards* of county commissioners shall, in June of each fourth year *after adoption of this act,* adopt a resolution fixing the salary of such officer for the term beginning with the first Monday in January immediately following the adoption of such resolution; provided further, that such officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties he is required to perform by reason of such consolidation; and provided further, that where county offices are consolidated as hereinbefore described, that the officer of the consolidated offices shall have any deputies they may appoint who shall be approved by the board *or boards* of county commissioners; and provided further, that the board *or boards* of county commissioners shall determine the number of deputies, stenographers, and clerks the said officers may appoint."

Approved: March 24, 1973.

CHAPTER NO. 459

An Act to Amend Section 89-115, R.C.M. 1947, to Grant Specific Authority to the Board of Natural Resources and Conservation to Provide for the Disposal of Water Projects; and to Include a Waiver of Liability from Suit on Behalf of the State.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-115, R.C.M. 1947, is amended to read as follows:

"89-115. **Water funds — rates — sale of water — lease and sale of water rights and property.** The board *of natural resources and conservation* is hereby authorized and empowered, subject to the provisions of this act, to fix and establish the prices, rates and charges at which any and all the resources and facilities made

available under the provisions of this act shall be sold and disposed of; to enter into any and all contracts and agreements, and to do any and all things which in its judgment are necessary, convenient or expedient for the accomplishment of any and all the purposes and objects of this act, under such general regulations and upon such terms, limitations and conditions as it shall prescribe; and it is and shall be the duty of the board to enter into such contracts and fix and establish such prices, rates and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of any and all of the works authorized by this act, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds as they severally become due and payable; provided, that nothing contained in this act shall authorize any change, alteration or revision of any such rates, prices or charges as established by any contract entered into under authority of this act except as provided by any such contract.

Any incorporated water users' association that is sustaining and responsible for the operations of its works is solely liable for any court action which may be brought against it or the state of Montana for any injury or damages occurring on the works caused by a failure to maintain safe working and operating conditions.

Every contract made by the board for the sale of water, use of water, water storage or other service, or for the sale of any property or facilities, shall provide that in the event of any failure or default in the payment of any moneys specified in such contract to be paid to the board, the board may, upon such notice as shall be prescribed in such contract, terminate such contract and all obligations thereunder. The act of the board in ceasing on any such default to furnish or deliver water, use of water, water storage or other service under such contract shall not deprive the board of, or limit any remedy provided by such contract or by law for the recovery of any and all moneys due or which may become due under such contract.

The board is empowered to sell, *transfer to user associations, abandon* or otherwise dispose of any rights of way, easements or property when it shall determine that the same is no longer needed for the purposes of this act, or to lease or rent the same or to otherwise take and receive the income or profit and revenue therefrom. *A determination shall be made by the board as to the market value of rights of way, easements or property to be sold, transferred, abandoned or otherwise disposed of.* All income or profit and revenue of the works and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of the works, property and

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facilities acquired under the provisions of this act, shall be *deposited to the state general fund."*

Approved: March 24, 1973.

CHAPTER NO. 460

An Act to Amend Section 11-1932, R.C.M. 1947, Increasing Minimum Wages of Firemen.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-1932, R.C.M. 1947, is amended to read as follows:

"11-1932. **Minimum wages of firemen in cities of first and second class.** From and after July 1, *1973,* there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work of at least *six hundred dollars ($600)* per month for the first year of service, and thereafter of at least *six hundred dollars ($600)* minimum per month plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service. From and after July 1, *1973,* there shall be paid to each duly appointed and confirmed member of the fire department of cities of the second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work, of at least *six hundred dollars ($600)* per month for the first year of service, and thereafter of at least *six hundred dollars ($600)* minimum per month plus one per cent (1%) of said minimum base monthly salary of for each additional year of service up to and including the twentieth year of such additional service."

Approved: March 24, 1973.

CHAPTER NO. 461

An Act to Provide for the Conservation, Management, Enhancement and Protection of Nongame Fish and Wildlife and Species Threatened with Extinction; and to Provide Enforcement Authority and Penalties for Violations.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act shall be known and may be cited as "The Nongame and Endangered Species Conservation Act."

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Section 2. As used in this act:

(1) "department" means the department of fish and game;

(2) "director" means the director of the state department of fish and game;

(3) "commission" means the fish and game commission;

(4) "ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life;

(5) "endangered species" means any species or subspecies of wildlife actively threatened with extinction due to any of the following factors:

(a) the destruction, drastic modification, or severe curtailment of its habitat, or

(b) its overutilization for scientific, commercial or sporting purposes, or

(c) the effect on it of disease, pollution, or predation, or

(d) other natural or man-made factors affecting its prospects of survival or recruitment within the state, or

(e) any combination of the foregoing factors. The commission shall have authority to recommend that the legislature include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife as it appears on the effective date of this chapter (part 17 of title 50 of the Code of Federal Regulations, appendix D) as well as any species or subspecies of fish and wildlife appearing on the United States' list of endangered foreign fish and wildlife (part 17 of title 50 of the Code of Federal Regulations, appendix A), as such list may be modified hereafter;

(6) "management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels. The term includes the entire range of activities that constitute a modern scientific resource program including, but not limited to, research, census, law enforcement, habitat acquisition and improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking;

(7) "nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean or other wild animal

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not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as "nongame wildlife" for purposes of this act;

(8) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function;

(9) "person" means any individual, firm, corporation, association or partnership;

(10) "take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife;

(11) "wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean or other wild animal or any part, product, egg or offspring or the dead body or parts thereof.

Section 3. The legislature finds and declares all of the following:

(1) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to insure their perpetuation as members of ecosystems;

(2) that species or subspecies of wildlife indigenous to this state which may be found to be endangered within the state should be protected in order to maintain and to the extent possible enhance their numbers;

(3) that the state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of species or subspecies of wildlife unless such actions will assist in preserving or propagating the species or subspecies; and

Section 4. (1) The department shall conduct investigations on nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of such determinations the department shall issue management regulations. Such regulations shall set forth species or subspecies of nongame wildlife which the department deems in need of management pursuant to this section, giving their common and scientific names by species and subspecies. The

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department shall conduct ongoing investigations of nongame wildlife. The commission may from time to time amend such regulations on the approval of the legislature by adding or deleting therefrom species or subspecies of nongame wildlife.

(2) The commission shall by such regulations establish proposed limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment as may be deemed necessary to manage such nongame wildlife. The commission may make such changes in the proposed regulations as are consistent with effective management of nongame wildlife as designated by the legislature.

(3) Except as provided in regulations issued by the commission, it shall be unlawful for any person to take, possess, transport, export, sell or offer for sale nongame wildlife deemed by the commission to be in need of management pursuant to this section. Subject to the same exception, it shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment nongame wildlife deemed by the commission to be in need of management pursuant to this section.

Section 5. (1) On the basis of investigations on nongame wildlife provided for in section 4 and other available scientific and commercial data, and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations, but not later than one (1) year after the effective date of this act, the commission shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state which are determined to be endangered within this state, giving their common and scientific names by species and subspecies.

(2) The department shall conduct a review of the state list of endangered species within not more than two (2) years from its effective date and every two (2) years thereafter and the commission shall request the legislature to amend the list by such additions or deletions as are deemed appropriate and at such times as are deemed appropriate.

(3) Except as otherwise provided in this chapter, it shall be unlawful for any person to take, possess, transport, export, sell or offer for sale and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists:

(a) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (1);

(b) any species or subspecies of fish and wildlife included

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by the commission and appearing on the United States' list of endangered native fish and wildlife as it appears on the effective date of this chapter (part 17 of title 50, Code of Federal Regulations, appendix D); and the United States' list of endangered foreign fish and wildlife (part 17 of title 50, Code of Federal Regulations, appendix A), as such list may be modified hereafter; provided, that any species or subspecies of wildlife appearing on any of the foregoing lists which enters the state from another state or from a point outside the territorial limits of the United States and which is transported across the state destined for a point beyond the state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(4) In the event the United States' list of endangered native fish and wildlife is modified subsequent to the effective date of this chapter by additions or deletions, such modifications whether or not involving species or subspecies indigenous to the state may be accepted as binding under subsection (3) if, after the type of scientific determination described in subsection (1), the commission recommends and the legislature accepts such modification for the state.

Section 6. (1) The director shall establish such programs, including acquisition of land or aquatic habitat, as are deemed necessary for management of nongame and endangered wildlife. The commission shall establish such policies as are necessary to carry out the purpose of this section.

(2) In carrying out programs authorized by this section, the commission may enter into agreements with federal agencies, political subdivisions of the state, or with private persons for administration and management of any area established under this section or utilized for management of nongame or endangered wildlife.

(3) The governor shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purposes of this section. The governor shall also encourage other state and federal agencies to utilize their authorities in furtherance of the purposes of this section.

(4) The director may permit the taking, possession, transportation, exportation or shipment of species or subspecies of wildlife which appear on the state list of endangered species, on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with subsection (4) of section 5, or on the United States' list of endangered foreign fish and wildlife, as such list may be modified hereafter, for scientific, zoo-

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logical, or educational purposes, for propagation in captivity of such wildlife, or for other special purposes.

(5) Upon good cause shown, and where necessary to alleviate damage to property or to protect human health, endangered species may be removed, captured or destroyed but only pursuant to permit issued by the director and, where possible, by or under the supervision of an agent of the department; provided, that endangered species may be removed, captured or destroyed without permit by any person in emergency situations involving an immediate threat to human life. Provisions for removal, capture or destruction of nongame wildlife for the purposes set forth above shall be set forth in regulations issued by the commission pursuant to subsection (1) of section 4.

Section 7. The commission shall issue such regulations as are necessary to carry out the purposes of this act.

Section 8. (1) Any person who violates the provisions of this act or whoever fails to procure or violates the terms of any permit issued thereunder shall be guilty of a misdemeanor.

(2) Any officer employed and authorized by the director or any peace officer of the state or of any municipality or county within the state shall have authority to enforce the provisions of this act.

(3) Wildlife seized under the provisions of this act shall be held by an officer or agent of the department pending disposition of court proceedings, and thereafter be forfeited to the state for disposition as the director may deem appropriate; provided, that, prior to forfeiture, the director may direct the transfer of wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping. The commission is authoried to issue regulations to implement this subsection.

Section 9. (1) None of the provisions of this act shall be construed to apply retroactively or to prohibit importation into the state of wildlife which may be lawfully imported into the United States or lawfully taken or removed from another state or to prohibit entry into the state or possession, transportation, exportation, processing, sale or offer for sale or shipment of any wildlife whose species or subspecies is deemed to be threatened with statewide extinction in this state but not in the state where originally taken if the person engaging therein demonstrates by substantial evidence that such wildlife was lawfully taken or removed from such state; provided, that this subsection shall not be construed to permit the possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of

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wildlife on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with subsection (4) of section 5, except as permitted in the provision by subsection (3) of section 5 and subsection (4) of section 6.

(2) If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Approved: March 24, 1973.

CHAPTER NO. 462

An Act to Amend Section 32-1123, R.C.M. 1947, Increasing the Allowable Width of Vehicles and the Moving Distance of Farm Vehicles; and Altering the Flagmen Escort Requirements of Farm Vehicles.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 32-1123, R.C.M. 1947, is amended to read as follows:

"32-1123. **Standards of maximum dimensions, weights, etc.** The following standards are hereby made applicable to and shall govern the maximum dimensions and weights of motor vehicles, and other characteristics and factors thereof, operating over the highways of and in the state of Montana, to the exclusion of any other standards or any other requirements respecting the subject matter: (1) **Definitions.** For the purpose of this act, the following definitions shall apply.

(a) Vehicle—as defined in section 32-2102, R.C.M. 1947.

(b) Motor vehicle—as defined in section 32-2102, R.C.M. 1947.

(c) Truck-Tractor—as defined in section 32-2103, R.C.M. 1947.

(d) Truck—as defined in section 32-2104, R.C.M. 1947.

(e) Trailer—as defined in section 32-2105, R.C.M. 1947.

(f) Semitrailer—as defined in section 32-2105, R.C.M. 1947.

(g) Dolly or converter gear—a device consisting of one (1) or two (2) axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, thereby converting a semitrailer into a full trailer as defined in section 32-2105, R.C.M. 1947.

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(2) Width—No vehicle, unladen or with load, shall have a total outside width in excess of *one hundred two (102)* inches, *except buses which may have a total outside width not to exceed one hundred two (102) inches, and such bus width shall be allowed only on paved highways twenty (20) feet or more in width*; provided, however, that this restriction does not apply to implements of husbandry moved or propelled upon the highway during daylight hours for a distance of not more than *one hundred (100)* miles, if the movement is incidental to the farming operations of the owner of the implement of husbandry; provided, further, that with respect to such implements of husbandry having a width in excess of twelve (12) feet, it shall be preceded by *a flagman escort* for the purpose of warning other highway users, *provided, however, that this restriction does not apply to dual wheel tractors under fifteen (15) feet overall width which are used in farming operations. The rear of such an implement of husbandry shall properly display lights which meet standard requirements in section 32-21-134, R.C.M. 1947. However, if the highway passes through a hazardous area, such implements of husbandry must be preceded and followed by flagman escorts.*

(3) Height—No vehicle, unladen or with load, shall exceed a height of thirteen (13) feet, six (6) inches.

(4) Length—(a) No single truck, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of thirty-five (35) feet.

(b) No single bus, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(c) No combination of truck and trailer, tractor and semitrailer, tractor-semitrailer-full trailer, or tractor-semitrailer-semitrailer converted to a full trailer by use of a dolly equipped with a fifth wheel, shall have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet, provided that when the combination consists of more than two (2) units the rear units of such combination shall be equipped with breakaway brakes.

(d) No motor vehicle shall tow more than one (1) motor vehicle and no motor vehicle shall draw more than two (2) motor vehicles attached thereto by the dual saddlemount method, that is by mounting the front wheels of one (1) vehicle on the bed of another leaving the rear wheels only of such vehicle in contact with the roadway, nor shall such combination have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

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(e) No passenger vehicle or truck of less than two thousand (2,000) pounds "manufactures' rated capacity" shall tow more than one (1) trailer or semitrailer, nor shall such combination have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(5) Permissible Loads—(a) No axle shall carry a load in excess of eighteen thousand (18,000) pounds. An axle load shall be defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle.

(b) (i) The gross weight of any group of axles of any vehicle or combination of vehicles, when the distance between the first and last axles of any group of axles is eighteen (18) feet or less, and the gross weight of any vehicle when the distance between the first and last axles of all the axles of the vehicle is eighteen (18) feet or less, shall not exceed that set forth in the following table of weights:

Distance in feet between the first and last axles of any group of axles of any vehicle or combination of vehicles, or between the first and last axles of all of the axles of any vehicle.	Maximum gross weight, in pounds, of any group of axles of any vehicle, or combination of vehicles, or of any vehicle.
4	32,000
5	32,000
6	32,200
7	32,900
8	33,600
9	34,300
10	35,000
11	35,700
12	36,400
13	37,100
14	43,200
15	44,000
16	44,800
17	45,600
18	46,400

(ii) The gross weight of any vehicle or combination of vehicles, where the distance between the first and last axles of the

vehicle or combination of vehicles is more than eighteen (18) feet, shall not exceed that set forth in the following table of weights:

Distance in feet between the first and last axles of all the axles of a vehicle or combination of vehicles.	Maximum gross weight, in pounds, of any vehicle or combination of vehicles.
18	46,400
19	47,200
20	48,000
21	48,800
22	49,600
23	50,400
24	51,200
25	55,250
26	56,100
27	56,950
28	57,800
29	58,650
30	59,500
31	60,350
32	61,200
33	62,050
34	62,900
35	63,750
36	64,600
37	65,450
38	66,300
39	68,000
40	70,000
41	72,000
42	73,280
43	73,280
44	73,280
45	73,280
46	73,280
47	73,280
48	73,280
49	73,280
50	73,280
51	73,280
52	73,600
53	74,400
54	75,200
55	76,000
56	76,400
57	76,800

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(c) The state highway commission may, based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation, authorize by special permit at a fee of ten dollars ($10), specifying highway routings, the operation of vehicles having two (2) but not more than nine (9) axles for which the maximum single axle load shall be twenty thousand (20,000) pounds and all axles forty (40) inches or less apart shall be considered a single axle, and for which no two (2) consecutive axles more than forty (40) inches or less than ninety-six (96) inches apart shall carry a load in excess of thirty-four thousand (34,000) pounds. The maximum gross weight allowed on any vehicle or combination so authorized shall be determined by the formula W equals 500 (LN/N minus 1 plus 12N plus 36) in which W equals gross weight, L equals wheel base in feet and N equals number of axles, provided that the maximum allowable gross weight on any group of axles shall not exceed the following values:

2 axles	40,000 pounds
3 axles	60,000 pounds
4 axles	80,000 pounds
5 axles	85,500 pounds
6 axles	90,000 pounds
7 axles	105,500 pounds
8 axles	105,500 pounds
9 axles	105,500 pounds

This subdivision shall have no application to highways which are a part of the national system of interstate and defense highways (as referred to in section 127 of title 23, United States Code) when such application would prevent this state from receiving any federal funds for highway purposes.

(d) The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half (½) foot, the next larger whole number shall be used.

(e) The maximum axle and axle group loads stated in paragraphs (a), (b) (i) and (b) (ii) of clause (5) above are subject to reasonable reduction in the discretion of the state highway commission during periods when road subgrades have been weakened by water saturation or other causes.

(f) The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits herein recommended shall be permitted only if and when authorized by special permit issued by the state highway commission or its officers, supervisors or agents acting pursuant to duly delegated authority from said commission, including the Montana highway patrol.

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(g) Nothing contained in this *act* shall be deemed to authorize, without a permit issued as provided by law, the operation of any combination of vehicles having any gross weight, axle load or size in excess of that authorized in this section, or the operation of any combination of vehicles on the national system of interstate and defense highways having any gross weight or size in excess of that permitted by operation of law in this state prior to July 1, 1956, or by federal law or regulation in excess thereof, which may be hereafter adopted. If federal law allows establishment of size and weight limits in excess of those permitted in this section, without penalty or denial of federal funds for highway purposes, the state highway commission may, by permit designating highway routing, authorize the movement on highways under its jurisdiction of vehicles or combination of vehicles of a size or weight in excess of the limits provided for in this section, but within the limits necessary to qualify for federal aid highway funds."

Approved: March 24, 1973.

CHAPTER NO. 463

An Act Prohibiting the Public Display of Offensive Sexual Material, With Definition of Terms; and Providing for a Penalty.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. A person is guilty of public display of offensive sexual material when, with knowledge of its character and content, he displays or permits to be displayed in or on any window, showcase, newsstand, display rack, wall, door, billboard, drive-in movie screen, marquee or similar place, in such manner that the display is easily visible from or in any public street, sidewalk, or thoroughfare or transportation facility, any pictorial, three-dimensional or other visual representation of a person or a portion thereof of the human body that predominantly appeals to prurient interest in sex, and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and is utterly without redeeming social importance for minors.

Section 2. A theater may not display previews or projections advertising or promoting motion pictures if such previews or projections contain a display of offensive sexual material and if minors are permitted to attend the showing of the motion picture then being featured.

Section 3. A person convicted of the public display of offensive sexual material shall be fined not to exceed five hundred

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dollars ($500) or imprisoned in the county jail for a term not to exceed six (6) months, or both.

Section 4. It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

Approved: March 24, 1973.

CHAPTER NO. 464

An Act Requiring American Indian Studies to be Part of the Educational Background of Public School Teaching Personnel Employed on, or in Public Schools Located in the Vicinity of, Indian Reservations Where the Enrollment of Indian Children Qualifies the School For Federal Funds for Indian Education Programs, and Encouraging American Indian Studies as Part of the Educational Background of all School Personnel Employed in the State.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of the American Indians and to be committed in its educational goals to the preservation of their cultural heritage. It is the intent of this act, predicated on the belief that school personnel should relate effectively with Indian students and parents, to provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

Section 2. (1) As used in this act, "American Indian studies" means instruction pertaining to the history, traditions, customs, values, beliefs, ethics and contemporary affairs of American Indians, particularly Indian tribal groups in Montana.

(2) As used in this act, "instruction" means

(a) a formal course of study offered by a unit of higher education developed with the advice and assistance of Indian people;

(b) in-service training developed by the superintendent of public instruction in cooperation with educators of Indian descent and made available to school districts, or

(c) in-service training provided by a local board of trustees, which is developed and conducted in cooperation with local Indian people.

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Section 3. (1) By July 1, 1979, all boards of trustees for elementary and secondary public school districts on, or in public schools located in the vicinity of, Indian reservations where the enrollment of Indian children qualifies the school for federal funds for Indian education programs, shall employ only those certified personnel who have satisfied the requirements for instruction in American Indian studies as defined in section 2 of this act.

(2) Members of boards of trustees and all non-certified personnel in public school districts on or in the vicinity of Indian reservations are encouraged to satisfy the requirements for instruction in American Indian studies as defined in section 2 of this act.

Section 4. Boards of trustees for all public school districts other than those defined in section 3 above and governing authorities for all non-public schools in Montana are encouraged to comply with the provisions and intent of this act.

Approved: March 24, 1973.

CHAPTER NO. 465

An Act Prohibiting the use of Chain Distributor Schemes; and Providing a Penalty.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. As used in this act:

(1) "Person" means a natural person, corporation, partnership, trust or other entity and in the case of an entity it shall include any other entity which has a majority interest in such entity or effectively controls such other entity as well as the individual officers, directors and other persons in act of control of the activities of each entity.

(2) "Chain distributor scheme" means a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment, and may further perpetuate the chain of persons who are granted such license or right upon such condition.

Section 2. It is unlawful for any person to promote, sell, or encourage participation in any chain distributor scheme.

Section 3. Any person violating the provisions of this act shall be deemed guilty of a felony and upon conviction shall be

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imprisoned in the state prison for a period not to exceed one (1) year, or punishable by a fine not to exceed one thousand dollars ($1,000), or both such fine and imprisonment.

Any person convicted of a second offense under this act shall be imprisoned in the state prison for a period not to exceed five (5) years or punishable by a fine not to exceed five thousand dollars ($5,000) or both such fine and imprisonment.

Approved: March 24, 1973.

CHAPTER NO. 466

An Act Providing Procedures Within the Department of Labor and Industry That Will Enable Women to Reach Their Fullest Potential of Service and Contribution to Society.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act establishes as an affirmative policy of this state within the department of labor and industry procedures which will enable women to contribute to society according to their fullest possible potential.

Section 2. The department of labor and industry shall:

(1) Conduct studies about the changing employment needs and problems of women in Montana and make recommendations to the governor and the legislative assembly.

(2) Direct public attention to critical employment problems confronting women as wives, mothers, homemakers and workers.

(3) Serve as a clearing house for information and materials pertinent to programs and services available to assist and advise women on employment and related matters.

(4) Cooperate with governmental departments and agencies primarily involved in curbing job discrimination and in the expansion of employment rights and opportunities available to the women of this state.

(5) Conduct periodic conferences throughout the state to make women more aware of employment opportunities, programs and services available to them.

(6) Serve as the central, permanent agency for the coordination and evaluation of employment programs and services for women of the state and as a planning agency for the development of those services.

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(7) Encourage women's organizations and other groups to institute local self-help activities designed to meet women's employment and related needs.

(8) Apply for and receive grants, appropriations or gifts from any federal, state or local agency, private foundation, or individual to carry out the purposes of this act.

Section 3. The commissioner of the department of labor and industry may issue rules of procedure and practice consistent with the Montana Administrative Procedure Act in order to administer and carry out the purposes of this act.

Approved: March 24, 1973.

CHAPTER NO. 467

An Act Excluding Agricultural Associations Formed Under the Cooperative Marketing Act from the Provisions of Section 94-1104, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 14-417.1, R.C.M. 1947, which reads as follows:

14-417.1. Associations executing marketing contracts in compliance with the provisions of this act shall not be deemed to be a conspiracy, a combination in restraint of trade or an illegal monopoly or trust in an attempt to lessen competition or fix prices arbitrarily under the provisions of section 94-1104.

Approved: March 24, 1973.

CHAPTER NO. 468

An Act to Amend Section 84-1501, R.C.M. 1947, by Reinstating a Provision Pertaining to an Alternative Method of Complying With Montana's Corporation License Tax Which Was Inadvertently Deleted By Section 1, Chapter 7, Second Extraordinary Session of the Laws of the Forty-Second Legislative Assembly.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-1501, R.C.M. 1947, is amended to read as follows:

"84-1501. **Corporation license tax—organizations exempt therefrom**—*alternative tax based on gross sales.* The term corporation

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includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity whether created under and pursuant to the state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided and except as provided in section 40-2821(5), R.C.M. 1947, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth; and every corporation, except as hereinafter provided, and except as provided in section 40-2821(5), R.C.M. 1947, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth.

The percentage of net income to be paid under this section shall be six and three-quarters per cent (6¾%) of all net income for the taxable period. The rate set forth in this act shall be effective for all taxable years ending on or after February 28, 1971. Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than fifty dollars ($50).

Pursuant to the provisions of article III, section 2, of the Multistate Tax Compact (title 84, chapter 67, R.C.M. 1947) every corporation deriving income from sources both within and without the state of Montana and required to file a return and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed one hundred thousand dollars ($100,000), may elect to pay a tax of one-half of one percent (.50%) of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of article IV, sections 16 and 17, of the Multistate Tax Compact.

There shall not be taxed under this title any income received by any—

(a). Labor, agricultural or horticultural organization;

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(b). Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

(c). Cemetery company owned and operated exclusively for the benefit of its members;

(d). Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e). Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f). Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

(g). Club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h). Farmers' or other mutual hail, cyclone or fire insurance company, mutual ditch or irrigation company, mutual or co-operative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

(i). Any co-operative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a co-operative basis;

(j). Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k). In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function."

Approved: March 23, 1973.

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CHAPTER NO. 469

An Act to Establish a Central Reporting System Within the Department of Revenue to Assist in the Identification of Corporations Transacting Business Within the State of Montana and/or Subject to Taxation by the State of Montana; Requiring the Secretary of State and the Department of Labor and Industry to Provide Lists Relating to Corporations; Providing for the Administration of the Act; Providing for the Lists as a Public Record; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. It shall be the duty of the department of revenue to establish a central reporting system to assist in the identification of corporations, foreign and domestic, which transact business within the state of Montana and/or are subject to taxation by the state of Montana pursuant to the provisions of title 84.

Section 2. The director of the department of revenue shall promulgate rules and regulations to accomplish the purposes of this act.

Section 3. The secretary of state shall direct a list of all corporations, foreign and domestic subject to the terms of title 15, chapter 22, to the department of revenue. The list shall include the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) such other information as the director of the department of revenue may require to administer the purposes of this act.

Section 4. The commissioner of the department of labor and industry shall direct a list of all corporations, foreign and domestic, subject to the terms of title 87, chapter 1, to the department of revenue. The list shall include the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) such other information as the director of the department of revenue may require to administer the purposes of this act.

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Section 5. The department of revenue shall compile a list of all corporations, foreign and domestic, subject to taxation by the state of Montana under the terms of title 84, to be filed in the central reporting system. Said list shall contain the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) whether the corporation filed such reports, returns, and other information pursuant to the terms of title 84, chapters 15 and 69.

Section 6. The department of revenue shall maintain the lists referred to in sections 3, 4 and 5 in such a manner as to cross-reference the information contained in the lists for the purpose of determining whether corporations, foreign and domestic, have complied with the terms of title 84, chapters 15 and 69, and the same list shall constitute a public record.

Section 7. The provisions of section 84-1507 shall not apply to the lists provided under the provisions of this act.

Section 8. This act shall be effective July 1, 1974.

Approved: March 24, 1973.

CHAPTER NO. 470

An Act Providing for the Filling of Vacancies in the Office of District Court Judge and Supreme Court Justice to Comply With Article VII, Section 8 of the 1972 Montana Constitution; Repealing Sections 93-209, 93-220, 93-309, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is created a judicial nomination commission for the state of Montana, whose function it shall be to provide the governor with a list of candidates for nominee to fill any vacancy on the supreme court or any district court of the state of Montana. The commission shall be composed of seven (7) members as follows:

(1) four (4) lay members, who are neither judges or attorneys, active or retired, and who shall reside in different geographical areas of the state; each of these four (4) members

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shall be representative of a different industry, business or profession, whether or not actively so engaged or retired; such members shall be appointed by the governor;

(2) two (2) attorneys, actively engaged in the practice of law, one (1) from each congressional district, who shall be appointed by the supreme court;

(3) one (1) district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to such election by the chief justice of the supreme court, and which for the purpose of the language of this act shall be considered as an appointment.

Section 2. (1) All original members named to the commission shall all serve until January 1, 1976. Their successors shall serve as follows:

(a) the members appointed by the governor shall serve for four (4) year terms;

(b) the attorneys elected shall serve a two (2) year term;

(c) the judge elected shall serve a two (2) year term.

(2) Thereafter all members shall serve terms of four (4) years.

(3) In the event a vacancy on the commission occurs, the governor shall appoint a replacement for the remainder of the term, provided such replacement shall be a member of the same group as the member he replaces.

(4) Appointments provided for in this section shall be made within thirty (30) days of the completion of the preceding terms, or within thirty (30) days of the occurrence of any vacancy.

Section 3. The commission shall elect one (1) of its members to serve as the secretary, and upon such election shall notify the governor of the name and mailing address of such person; the secretary shall keep a record of all proceedings by the commission, and act as corresponding secretary with the governor's office.

Section 4. Four (4) members of the commission shall constitute a quorum for the transaction of business. To submit a name to the governor, there must be a concurrence of at least four (4) members.

Section 5. The commission and each member is authorized to make investigations concerning the qualifications of eligible persons, and any lawyer in good standing who has the qualifications set forth by law for holding judicial office, may be a candidate,

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and may make application to the commission for consideration, or application may be made by any person on his behalf.

Section 6. The commission shall meet forthwith after a vacancy occurs on the supreme court or district court and submit to the governor within thirty (30) days from the date of the vacancy a list of not less than three (3), nor more than five (5) persons.

Section 7. The governor must make an appointment from those names submitted by the commission.

Section 8. If the governor fails to nominate within thirty (30) days after receipt of the list, the chief justice or acting chief justice shall make the nomination.

Section 9. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session is effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

Section 10. A nominee confirmed by the senate serves until the next succeeding general election. The candidate elected at that election holds the office for the remainder of the unexpired term.

Section 11. Members of the commission are not eligible for nomination to a judicial office during their term on the commission or for one (1) year thereafter.

Section 12. The members of the commission are not entitled to compensation for their services, but they are entitled to actual expenses while actually engaged in the discharge of their official duties.

Section 13. The commission shall make rules for the conduct of its affairs and to provide for the confidentiality of its proceedings.

Section 14. Sections 93-209, 93-220, and 93-309, R.C.M. 1947, are repealed.

Approved: March 27, 1973.

CHAPTER NO. 471

An Act Providing Compensation for Injuries Producing Total Temporary Disability Under the Workmen's Compensation Act; Repealing Section 92-701, R.C.M. 1947.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-701.1, R.C.M. 1947, which reads as follows:

92-701.1. **Compensation for injuries producing temporary total disability.** Weekly compensation benefits for injury producing total temporary disability shall be sixty-six and two-thirds per cent (66 2/3%) of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed one hundred ten dollars ($110) beginning July 1, 1973. Beginning July 1, 1974, the maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total temporary disability benefits shall be paid for the duration of the worker's temporary disability.

In cases where it is determined that periodic benefits granted by the Social Security Act, 42 U.S.C. 301 (1935), are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero (0), by an amount equal, as nearly as practical, to one-half (½) the federal periodic benefits for such week.

Section 2. Section 92-701, R.C.M. 1947, is repealed.

Approved: March 27, 1973.

CHAPTER NO. 472

An Act to Revise Provisions for Waiver of Nonresident Fees in State Reciprocal Agreements; And Amending Section 75-8601, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-8601, R.C.M. 1947, is amended to read as follows:

"75-8601. **Charges for tuition—waiver of nonresident fees.** The regents may:

(a) prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(b) waive at their discretion, nonresident tuition for selected and approved nonresident students not to exceed at any unit two per cent (2%) of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary such tuition may be waived in excess of two per cent (2%) of unit enrollment for nonresident students who enroll under provisions

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of *any* WICHE sponsored state reciprocal *agreements which provide for the payment, where required, of the student support fee by the reciprocal state.*"

Approved: March 27, 1973.

CHAPTER NO. 473

An Act Amending Section 8-116, R.C.M. 1947, Providing that Every Motor Carrier Shall, at the Time of Issuance of a Certificate, and Annually Thereafter on or Between the First Day of January and the Fifteenth Day of January of Each Calendar Year, Pay to the Commission the Sum of Five Dollars ($5) for Every Motor Vehicle Operated by the Carrier Over or Upon the Public Highways of this State; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 8-116, R.C.M. 1947, is amended to read as follows:

"8-116. **Annual fee for motor carriers—fee for seasonal operators—compliance required of motor carriers operating in more than one state—revocation of certificate for failure to pay fees—lien of fees and charges.** (a) In addition to all of the licenses, fees or taxes imposed upon motor vehicles in this state, and in consideration of the use of the public highways of this state, every motor carrier, as defined in this act, shall, at the time of the issuance of a certificate and annually thereafter, on or between the first day of *January* and the fifteenth day of *January,* of each calendar year, pay to the *public service commission* of the state of Montana the sum of *five dollars ($5),* for every motor vehicle operated by the carrier over or upon the public highways of this state.

Provided, that a motor carrier engaged in seasonal operations only, where its said operations do not extend continuously over a period of not to exceed six (6) months in any calendar year, shall only be required to pay compensation and fees in a sum equal to one-half (½) of the compensation and fees herein provided, and, provided further, that the compensation and fees herein imposed shall not apply to motor vehicles maintained and used by a motor carrier as standby or emergency equipment. The *commission* shall have the power and it is hereby made its duty to determine what motor vehicles shall be classed as standby or emergency equipment.

(b) When transportation service is rendered partly in this state and partly in an adjoining state or foreign country, motor

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carriers shall comply with the provisions of this act relating to the payment of compensation and to the making of annual or special reports or statements herein required, and shall show the total business performed within the limits of this state and such other information concerning its operation within this state as may be required by the *commission* as fully and completely and in the same manner as herein required of motor carriers operating wholly within this state.

(c) Upon the failure of any motor carrier to pay such compensation, when due, the *commission* may in its discretion revoke the carrier's certificate or privilege and no carrier whose certificate or privilege is so revoked shall again be authorized to conduct such business until such compensation shall be paid.

(d) All compensation, fees, or charges, imposed and accruing under the provisions of this act, shall be a lien upon all property of the motor carrier used in its operations under this act; said lien shall attach at the time the compensation, fees, or charges become due and payable, and shall have the effect of an execution duly levied on such property of the motor carrier and shall so remain until said compensation, fees, or charges are paid or the property sold for the payment thereof.''

Section 2. This act is effective on its passage and approval.

Approved: March 27, 1973.

CHAPTER NO. 474

An Act Amending Section 25-605, R.C.M. 1947, Increasing the Salaries of Certain County Officers.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 25-605, R.C.M. 1947, is amended to read as follows:

"25-605. **Salaries of certain county officers.** The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county assessors, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries as provided in section 16-3302, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County	Salary Col. A	Taxable Valuation of County	Salary Col. B
Below 3,000	*$3,520*	Below $2,000,000	*$3,520*
3,000 to 3,999	*$3,620*	$ 2,000,000 to 2,999,999	*$3,620*
4,000 to 4,999	*$3,700*	3,000,000 to 3,999,999	*$3,700*

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5,000	to 5,999	....$3,780	
6,000	to 6,999	....$3,880	
7,000	to 7,999	....$4,130	
8,000	to 8,999	....$4,200	
9,000	to 9,999	....$4,300	
10,000	to 12,499	....$4,370	
12,500	to 14,999	....$4,460	
15,000	to 17,499	....$4,550	
17,500	to 19,999	....$4,630	
20,000	to 24,999	....$4,720	
25,000	to 29,999	....$4,800	
30,000	to 39,999	....$4,890	
40,000	to 49,999	....$5,010	
50,000	to 59,999	....$5,190	
60,000	to 69,999	....$5,370	
70,000	to 79,999	....$5,520	
80,000	to 89,999	....$5,690	
90,000	to 99,999	....$5,870	
100,000	and over	.... $6,050	

4,000,000	to 4,999,999	$3,780	
5,000,000	to 5,999,999	$3,880	
6,000,000	to 6,999,999	$4,130	
7,000,000	to 7,999,999	$4,200	
8,000,000	to 9,999,999	$4,300	
10,000,000	to 11,999,999	$4,370	
12,000,000	to 13,999,999	$4,460	
14,000,000	to 15,999,999	$4,550	
16,000,000	to 17,999,999	$4,630	
18,000,000	to 19,999,999	$4,720	
20,000,000	to 22,499,999	$4,800	
22,500,000	to 24,999,999	$4,890	
25,000,000	to 29,999,999	$5,010	
30,000,000	to 34,999,999	$5,190	
35,000,000	to 39,999,999	$5,370	
40,000,000	to 44,999,999	$5,520	
45,000,000	to 49,999,999	$5,690	
50,000,000	to 54,999,999	$5,870	
55,000,000	to 59,999,999	$6,050	
60,000,000	to 64,999,999	$6,050	
65,000,000	to 69,999,999	$6,050	
70,000,000	to 74,999,999	$6,050	
75,000,000	to 79,999,999	$6,050	
80,000,000	to 84,999,999	$6,050	
85,000,000	to 89,999,999	$6,050	
90,000,000	to 94,999,999	$6,050	
95,000,000	to 99,999,999	$6,050	
100,000,000	and over	..... $6,050	

The total salary paid to county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county assessors, county superintendents of schools and county sheriffs, and county surveyors in counties where county surveyors receive salaries, as provided in section 16-3302, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation; *provided however, that county superintendent of schools shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of four hundred dollars ($400) per year and county sheriffs shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of one thousand two hundred dollars ($1,200) per year. Notwithstanding the above, in each county with a population in excess of thirty thousand (30,000) the county attorney shall receive a salary of sixteen thousand dollars ($16,000) per year."*

Approved: March 27, 1973.

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CHAPTER NO. 475

An Act Amending the Montana Apiculture Act, Title 82, Chapter 8, R.C.M. 1947; Amending Sections 82-805, 82-806, 82-807, 82-808, 82-809, 82-811 and 82-814, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 82-805, R.C.M. 1947, is amended to read as follows:

"82-805. **Definitions.** The following terms shall be construed respectively to mean:

(a) "Apiary"—Any place where one (1) or more colonies of bees are kept, or one or more hives containing honeycombs or bee combs are kept.

(b) "Equipment"—Hives, supers, frames, veils, gloves or any apparatus, tools, machines or other devices used in the handling and manipulation of bees, honey, wax, and hives, and shall also include any containers of honey and wax which may be used in any apiary or in transporting bees and their products and apiary supplies.

(c) "Hive"—Frame hive, box hive, box, barrel, log gum, skep, or any other receptacle or container, natural or artificial or any part thereof, which may be used as a domicile for bees.

(d) "Bees"—Any stage of the *bees in the genus, Apis.*

(e) "Bee diseases"—American or European foulbrood, sacbrood, bee paralysis, or any other disease or abnormal condition of egg, larval, pupal or adult stages of bees.

(f) "Colony"—The hive and all equipment used in connection therewith.

(g) "Persons"—Individuals, associations, partnerships or corporations.

(h) "Queen Apiary"—Any apiary or premises in which queen bees are reared or kept for sale or gift.

Words used in this act shall be construed to import either the plural or singular, as the case demands."

Section 2. Section 82-806, R.C.M. 1947, is amended to read as follows:

"82-806. **Powers and duties of** *the department of agriculture. To prevent* the spread of contagious and infectious diseases among

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bees and apiaries, *the department of agriculture* shall have the following powers:

1. To order the transfer of colonies of bees from hives or containers which cannot be properly examined for brood or other diseases to other hives or containers.

2. To order disinfection of any bee, beehive, brood comb or any other equipment which is infected or contaminated and with full power to order the burning of, or to burn, any bee, beehive, brood comb, or any other equipment, if, in his judgment, disinfection will not remove the infection or contamination, provided, however, before burning any such property, the *department,* shall give the owner of, or person in charge thereof, a written notice at least five (5) days prior to the date on which said property will be burned. This notice to be given by registered mail or personally served upon the owner of, or person in charge of, such property.

3. To quarantine any apiary where foulbrood or any contagious or infectious diseases are present and, during such quarantine, to prevent the removal from such apiary, of any bees or equipment excepting under authority of a special permit issued by the *department* permitting such removal under conditions and regulations to be prescribed by *it.* No person shall sell, or offer for sale, any apiary, bees or equipment while the same is under quarantine unless a permit authorizing such sale or removal is made by the *department.* Written notice of quarantine shall be posted by *the department, owner, or person in charge* at such quarantine apiary at a conspicuous place and a copy thereof shall be personally served or sent by registered mail to the owner of such apiary or person in charge thereof, and such quarantine shall continue in effect until it is ordered removed and a copy of such removal served in the same manner.

4. To inspect any apiary, *hives, equipment, or premises for the presence of disease."*

Section 3. Section 82-807, R.C.M. 1947, is amended to read as follows:

"82-807. **Registration.** It shall be unlawful for any person, firm or corporation in the state of Montana to possess or own an apiary without registering the same as hereinafter provided. Every person, firm or corporation who shall own or possess in the state of Montana an apiary shall, on or before the first day of April each year hereafter, cause the same to be registered in the following manner:

1. Applications shall be made to the *department* for registration *blanks.*

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2. Registration blanks shall be furnished by the *department, the* blank shall contain a statement of the name, place of residence, place of business, of the owner, together with the number of colonies of bees, hives and equipment in such apiary, and the location in the state, setting forth specifically the location by sectional division to the nearest quarter section, and the township and range, and if within the corporate limits of a town or city, by setting forth the number of the lot and block in such town or city and stating also the name of the owner, renter and/or occupant of the land whereupon such apiary is located, and give such other information as the *department* may require under rules and regulations established by him for the protection, safety and welfare of the public and beekeeping industry. The registration blanks shall also include the date when the location was first established.

3. Upon receipt of such application, and payment of the fees hereinafter prescribed, the *department* shall be authorized to issue a certificate of registration for an apiary, setting forth the name of the owner, the specific location and the number of colonies of bees or size of the apiary authorized under such registration.

4. In issuing certificates of registration for apiaries established and registered as now provided by law, if there is a conflict between applicants with respect to location, the *department* shall give preference to the applicant having the oldest continuous established location.

5. Certificates of registration shall not be issued for new locations of apiaries which are within such close proximity to established registered apiaries that there is or may be danger of spread of disease, or that such proximity will or may interfere with the proper feeding and honey flow of such established apiaries.

6. Before authorizing the establishment of new locations, the *department* shall give notice of at least ten (10) days by registered letter to all registered apiarists likely to be affected by the proposed new location so that any party affected may file written protests with the *department* against authorizing such new locations. In the event a written protest is filed, the *department* may require a hearing and notice of the time and place of such hearing shall be given all parties interested by registered mail at least ten (10) days before the date set for the hearing.

7. It shall be unlawful for the owner of any established registered apiary to change locations without first receiving from the *department* a permit to establish such new location. In making such application he shall specify the location with the same particularity as in the application or original registration. If such new

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location is not used within sixty (60) days after a permit is issued, then such permit shall lapse and all right thereunder shall terminate. Provided further that permits for new locations shall not be issued for greater areas than the applicant can show are reasonably necessary for his needs consistent with good beekeeping practices.

8. *Suitable evidence of registration furnished by the department shall be posted in a conspicuous place at or near the location of the colony of honeybees or beehives. If an owner has more than one location, suitable evidence of registration furnished by the department shall be posted at each location.*

9. An old apiary location which is not stocked with bees during at least part of the normal build-up or honey-producing season shall be forfeit [forfeited], and all rights thereunder shall lapse and terminate and the same shall be open for new registration at the next regular registration time.

10. Any registration not applied for by April 1st of each year hereafter shall be considered as a late registration and as such shall incur an added penalty of ten (10) per cent of the regular applicable registration fee. Registrants who fail to apply for reregistration by April 1st of each year hereafter, shall be notified of their delinquency by the *department.* Such notification shall be by registered mail, postage prepaid, and shall be deemed sufficient if deposited in a United States post office or mail box and addressed to such registrant at his last address appearing in the bee location registration files of the *department* at least ten (10) days prior to May first. Any location for which application for reregistration is not made by May first of each year hereafter shall be forfeit [forfeited] and all rights thereunder shall lapse and terminate.

11. Any apiary not regularly attended in accordance with good beekeeping practice and which comprises a hazard or threat to disease control in the beekeeping industry may be considered an abandoned apiary and will be subject to seizure by the *department.* Any diseased equipment or equipment *by reason of its physical condition or construction cannot be inspected,* may be burned and the remainder may be sold at public auction, proceeds after the cost of sale are deducted to be returned to the former owner or his estate; provided, however, that before burning any such equipment, or causing the same to be sold, the *department,* shall give the owner of, or person in charge thereof, a written notice at least five (5) days prior to the date on which said property will be burned or sold. This notice to be given by registered mail or personally served upon the owner of, or person in charge of, such property. *If the owner or person in charge cannot be located, a registered letter sent to the owner's last address registered with the department is sufficient notice under this section.*

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12. Any right a beekeeper may have to a location may be sold or transferred to a purchaser subject to the provisions of this act, provided all bees and equipment thereon are sold to said purchaser."

Section 4. Section 82-808, R.C.M. 1947, is amended to read as follows:

"82-808. **Registration fees.** Each year before a certificate of registration shall be issued for any apiary, the owner or applicant for such certificate shall pay to the *department* a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed by each applicant, firm or corporation in the state of Montana:

1 to 10 colonies of bees	$ 2.50
11 to 50 colonies	5.00
51 to 200 colonies	10.00
201 to 300 colonies	15.00
301 to 500 colonies	20.00
501 to 1000 colonies	30.00
1001 to 2000 colonies	35.00
2001 to 3000 colonies	45.00
3001 to 4000 colonies	55.00
4001 to 5000 colonies	65.00
5001 colonies and upward	75.00

If, after the registration is made for the ensuing year, additional or new colonies are added, the same shall be reported as in this act provided and fees shall be paid in accordance with the above schedule for the total number of colonies for that year."

Section 5. Section 82-809, R.C.M. 1947, is amended to read as follows:

"82-809. **Inspection of** *bees or* **used beekeeping equipment transported** *interstate.* It shall be unlawful to transport or bring into the state of Montana any used beekeeping equipment or containers, including honey to be extracted, unless it is certified and duly marked as disease-free by *an official responsible for apiary regulations* of the state from which it is being moved. The *department* shall be advised in advance of the date of entry and the destination of said material. In addition, any previously used equipment transported into the state shall be quarantined by the *department* in accordance with the provisions of subdivision *3* of section 82-806, from the time it enters the state until it has been in use while under quarantine for a minimum of ninety (90) days and at least until the following July first.

The department may also inspect and certify as disease-free,

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bees or beekeeping equipment which are to be transported from Montana to a state which requires an inspection in the state of origin.

The costs of making inspections *provided in this section* shall be paid in advance by the owner of *the bees or* equipment and shall include a per diem of ten dollars ($10.00) and all necessary traveling expenses and a fee of five dollars ($5.00) for the issuance of a certificate of health. If inspection by an official of any other state is deemed insufficient for the protection of the Montana bee industry by the *department,* the *department* will so state by public statement, and importation of beekeeping materials, including honey for extracting, from such state shall be denied, unless the same is first inspected by the *department* and there is obtained from *it* a certificate of inspection showing that the same is apparently free from contagious or infectious disease. The costs of making such inspection shall be paid by the person requesting the same and inspection may be made at any point outside the state of Montana convenient to the person making the inspection. The *department* may require that the costs of making such inspection be paid in advance and such costs shall include per diem of ten dollars ($10.00) and of necessary traveling expenses, and a fee of five dollars ($5.00) for the issuance of the certificate of inspection. Such beekeeping materials shall also be subject to quarantine as hereinbefore in this section provided."

Section 6. Section 82-811, R.C.M. 1947, is amended to read as follows:

"82-811. **Disposition of fees.** All registration fees and inspection fees collected under the provisions of this act shall be transmitted by the *department* to the state treasurer, who shall deposit the same to the credit of the general fund of the state."

Section 7. Section 82-814, R.C.M. 1947, is amended to read as follows:

"82-814. **Orders effective until reversed or modified by court.** Until reversed or modified by a court of competent jurisdiction any order or regulation made and promulgated by the *department,* including any order refusing permit for the establishment of a new apiary location, shall be effective until reversed or modified by a final decision, or final judgment, and while such action is pending, (section 93-8706); and no injunction or other process or writ shall be issued or made by any court restraining such enforcement until such final determination."

Approved: March 27, 1973.

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CHAPTER NO. 476

An Act to Amend Sections 59-1001, 59-1003, 59-1005 and 59-1008, R.C.M. 1947; to Provide Laws For Administering Annual Vacation and Sick Leave Benefits For All Employees of State, County and City Governments; and To Add a New Section To Provide For Jury Leave For Public Employees.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. For the purpose of this act:

(1) "Agency" means any legally constituted department, board or commission of state, county or city government.

(2) "Employee" means any person employed by the state, county or city governments.

(3) "Permanent employee" means an employee who regularly works for more than six (6) months in any twelve (12) month period.

(4) "Part-time employee" means an employee who normally works less than forty (40) hours a week.

(5) "Full-time employee" means an employee who normally works forty (40) hours a week.

(6) "Temporary position" means a position created for a definite period of time but not to exceed six (6) months and the position is not renewable.

(7) "Seasonal position" means a position which, although temporary in nature, regularly occurs from season to season or from year to year.

(8) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation or personal business at the request of the employee and with the concurrence of the employer.

(9) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or his immediate family.

(10) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service of more than five (5) working days.

(11) "Continuous employment" means working within the same jurisdiction without a break in service of more than five (5) working days or without a continuous absence without pay of more than fifteen (15) working days.

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(12) "Break in service" means that period of time an employee takes to change employment from one agency to employment in another agency of the same jurisdiction.

Section 2. Section 59-1001, R.C.M. 1947, is amended to read as follows:

"59-1001. **Annual vacation leave.** (1) Each *full-time* employee of the state, or any county or city thereof is entitled to and shall earn annual vacation leave *credits* from the first full *pay period* of employment. *For calculating vacation leave credits two thousand eighty (2,080) hours (52 weeks x 40 hours) shall equal one (1) year. Proportionate vacation leave credits shall be earned and credited at the end of each pay period.* However, employees are not entitled to any *vacation* leave with pay until they *have been* continuously *employed* for a period of twelve (12) calendar months. *Persons regularly employed nine (9) or more months each year, but whose continuous employment is interrupted by the seasonal nature of the position, shall earn vacation credits. However, such persons must be employed twelve (12) qualifying months before they can use the vacation credits. In order to qualify, such employees must immediately report back for work when operations resume in order to avoid a break in service.* Vacation *leave* credits shall be earned in accordance with the following schedule:

(a) from one (1) *full pay period* through ten (10) years of employment at the rate of *fifteen (15)* working days for each *year* of service;

(b) *after ten (10)* years through fifteen (15) years of employment at the rate of *eighteen (18)* working days for each *year* of service;

(c) *after fifteen (15)* years through twenty (20) years of employment at the rate of *twenty-one (21)* working days for each *year* of service;

(d) after twenty (20) years of employment at the rate of *twenty-four (24)* working days for each *year* of service.

Permanent part-time employees are entitled to prorated annual vacation benefits if they have regularly scheduled work assignments and normally work at least twenty (20) hours each week of the pay period and have worked the qualifying period."

Section 3. Section 59-1003, R.C.M. 1947, is amended to read as follows:

"59-1003. **Separation from service or transfer to other department—cash for unused vacation leave.** An employee *who termin-*

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ates his employment with the state, or any county or city thereof, for reason not reflecting discredit on himself, shall be entitled upon the date of such *termination* to cash compensation for unused vacation leave, *assuming that the employee has worked the qualifying period set forth in section 59-1001 (1) above. However, if an employee transfers between agencies of the same state, county or city jurisdiction there shall be no cash compensation paid for unused vacation leave. In such a transfer the receiving agency assumes the liability for the accrued vacation credits transferred with the employee."*

Section 4. Section 59-1005, R.C.M. 1947, is amended to read as follows:

"59-1005. **Absence because of illness not chargeable against vacation.** Absence from employment by reason of illness shall not be chargeable against *unused* vacation leave *credits unless approved by the employee."*

Section 5. Section 59-1008, R.C.M. 1947, is amended to read as follows:

"59-1008. **Sick leave.** (1) *Each full-time* employee of the state, or of any county or city thereof, *is entitled to and shall earn* sick leave *credits from the first full pay period of employment. For calculating sick leave credits two thousand eighty (2,080) hours (52 weeks x 40 hours) shall equal one (1) year. Proportionate sick leave credits shall be earned and credited at the end of each pay period. Sick leave credits shall be earned at the rate of twelve (12) working days for each year* of service without restriction as to the number of working days he may accumulate.

(2) *An employee* may not accrue sick leave *credits* during a *continuous* leave of absence without pay, which exceeds fifteen (15) *calendar* days. *Employees are not* entitled to *be paid for* sick leave under the provisions of this act *until they have been* continuously employed for ninety (90) days. *Upon* completion of *the qualifying period, the employee* is entitled to *the* sick leave *credits he has earned.*

(3) Permanent part-time employees are entitled to prorated leave benefits if they have a regularly scheduled work assignment, and normally work at least twenty (20) hours each week of the pay period, and have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates his employment with the state or of any county or city thereof, is entitled to a lump-sum payment equal to one-fourth (¼) of the pay attributed to his accumulated

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sick leave. The pay attributed to his accumulated sick leave shall be computed on the basis of the employee's salary *or wage* at the time the sick leave *credits were earned.* Accrual of sick leave *credits* for *calculating* the lump-sum payment provided for in this subsection *begins July 1, 1971,* and the payment therefor, shall be the responsibility of the state, or any county or city thereof, wherein the sick leave accrues. However, no employee forfeits any *sick leave* rights or benefits he *had accrued prior to July 1, 1971. However, where an employee transfers between agencies within the same state, county or city jurisdiction he shall not be entitled to a lump-sum payment. In such a transfer the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.*

(6) An employee of the state or any county or city thereof who receives a lump-sum payment pursuant to this act and who is again employed by the state or a county or city thereof *shall* not be credited with any sick leave for which he has previously been compensated.

(7) The department of administration of the state of Montana or *the administrative office* of any county or city thereof *shall be* responsible for the proper administration of sick leave and shall promulgate such rules and regulations as it deems necessary to *achieve* the uniform administration of sick leave and *to prevent the abuse thereof.* When promulgated these rules and regulations are effective as to all employees of the state of Montana or any county or city thereof.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this act."

Section 6. (1) Each employee of the state, or any county or city thereof, who is under proper summons, shall be granted leave without pay to serve as a juror in a court or judicial proceedings without loss of cumulative benefits.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his witness time off against his annual leave he shall not be required to remit his witness fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowances paid him by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

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(4) The department of administration of the state of Montana or the administrative office of any city or county thereof shall issue the necessary regulations to implement this act.

Approved: March 27, 1973.

CHAPTER NO. 477

An Act Requiring the Insurer to Accept or Deny a Claim Within Thirty (30) Days of Its Filing; Payment of Weekly Compensation Until Claimant Returns to Work; Termination of Compensation only Upon Notice and Division Approval; and Payment of Costs.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Every insurer under any plan for the payment of workmen's compensation benefits shall within thirty (30) days of receipt of a claim either accept or deny the claim, and if denied shall inform the claimant in writing of such denial. Biweekly compensation benefits shall be continuously paid until the claimant is fully released by his doctor, returns to work, or no longer suffers a loss of earnings capacity. If the insurer determines to initially deny a claim, or after a claim has been accepted, terminates biweekly compensation benefits, it may do so only after fifteen (15) days written notice to the claimant and the division, and after written approval of the division.

Section 2. In the event the insurer denies the claim, or terminates a claim that has already been accepted, and the claim is later determined to be compensable either through hearing or appeal to the courts, the insurer shall pay all costs incurred by the claimant, including reasonable attorneys' fees as established by the division.

Approved: March 27, 1973.

CHAPTER NO. 478

An Act to Provide for the Support of the Government of Montana for the Years 1973 and 1974, Providing a Severability Clause and an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The following tax levies for state purposes are hereby made upon all property in the state of Montana, subject to taxation, for the year 1973, as ascertained by taking the per-

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centage of the true and full value provided by law for purposes of taxation, to wit:

(a) For the state general fund, two (2) mills, or so much thereof as the state department of revenue may find necessary, under the provisions of section 84-713.

(b) For the university millage fund, to provide funds for the support of the Montana university system, as provided in Referendum Measure No. 65 and passed by vote of the people at the general election held November 5, 1968, six (6) mills, or so much thereof as may be necessary to raise the amount appropriated by the legislative assembly from the university millage fund for support of the units of the Montana university system.

Section 2. The following tax levies for state purposes are hereby made upon all property in the state of Montana, subject to taxation, for the year 1974, as ascertained by taking the percentage of the true and full value provided by law for the purposes of taxation, to wit:

(a) For the state general fund, two (2) mills, or so much thereof as the state department of revenue may find necessary under the provisions of section 84-713.

(b) For the university millage fund, to provide funds for the support of the Montana university system, as provided in Referendum Measure No. 65 and passed by vote of the people at the general election held November 5, 1968, six (6) mills, or so much thereof as may be necessary to raise the amount appropriated by the legislative assembly from the university millage fund for support of the units of the Montana university system.

Section 3. If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act.

Section 4. This act shall be in full force and effect from and after its passage and approval.

Approved: March 27, 1973.

CHAPTER NO. 479

An Act to Provide for the Support of the Government of Montana for the Years 1973 and 1974.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The following tax levy for a state purpose is hereby made upon all property in the state of Montana, subject

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to taxation for the year 1973, as ascertained by taking the percentage of the full and true value provided by law for the purposes of taxation, to wit:

(a) For the property tax administration fund, three (3) mills or so much thereof as the state department of revenue may find necessary, under the provisions of section 84-429.8.

Section 2. The following tax levy for a state purpose is hereby made upon all property in the state of Montana, subject to taxation for the year 1974, as ascertained by taking the percentage of the full and true value provided by law for the purposes of taxation, to wit:

(a) For the property tax administration fund, three (3) mills or so much thereof as the state department of revenue may find necessary, under the provisions of section 84-429.8.

Approved: March 27, 1973.

CHAPTER NO. 480

An Act Providing for Increased Penalties for Littering and Suspension of Camping Permit for Conviction of Littering; and Amending Sections 94-3339 and 26-812, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 94-3339, R.C.M. 1947, is amended to read as follows:

"94-3339. **Penalties.** Any person violating the provisions of section 94-3336 of this act is guilty of a misdemeanor, subject to a minimum fine of *twenty-five dollars ($25)* or imprisonment, or both, as in the case of misdemeanors, and, in lieu thereof, in the sound discretion of any court in which conviction is obtained, may be directed by the judge to pick up and remove from any public street or highway or public and private right of way, or public beach or public park, or, with prior permission of the legal owner or tenant in lawful possession of such property, any private property upon which it has been established by competent evidence that he has deposited litter, any and all litter deposited thereon by anyone prior to the date of execution of sentence."

Section 2. Section 26-812, R.C.M. 1947, is amended to read as follows:

"26-812. **Forfeiture of license or permit for littering.** Any holder of a Montana resident or nonresident fishing or hunting license, or camping permit convicted of littering campgrounds,

public or private lands, streams, or lakes while hunting, fishing or camping shall forfeit his license and privilege to hunt, fish, camp or trap within Montana for a period of *one (1) year* from the date of conviction. *Any person who hunts, fishes, camps or traps in Montana while such license and privilege are suspended is guilty of a misdemeanor.''*

Approved: March 27, 1973.

CHAPTER NO. 481

An Act Providing for Permits for Disinterments of Dead Bodies and for Administration by the Department of Health and Environmental Sciences.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. (1) A body, after burial, may be disinterred for reinterment or transport, upon obtaining a permit therefor from the local registrar of the jurisdiction where the body is interred.

(2) Administration of the act shall be in the department of health and environmental sciences, which shall adopt rules accordingly. The rules shall provide that as a right to the permit the applicant make a showing of reasonable cause for the disinterment.

(3) This act provides a supplementary procedure for disinterment of a dead body, and is not amendatory to or repealing of any other act.

Approved: March 27, 1973.

CHAPTER NO. 482

An Act Requiring Counties to Purchase Liability Insurance for Sheriffs and Sheriffs' Departments.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The board of county commissioners shall purchase liability insurance protecting the sheriff, undersheriff, deputy sheriffs, and members of any voluntary reserve organization acting under the direction of the sheriff. The liability insurance shall provide minimum coverage of one hundred thousand dollars ($100,000) per occurence while the insured officer is acting on official county business.

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Section 2. The liability insurance shall pay all sums for which the insured officers shall become legally liable to pay as damages because of:

(1) bodily injury, sickness or disease sustained by any person accidentally caused by any act of the insured officer in making or attempting to make an arrest while acting within the scope of his duties as a law enforcement officer including damages for death, and for care and loss of services resulting from same;

(2) false arrest, erroneous service of civil papers, false imprisonment, malicious prosecution, libel, slander, defamation of character, violation of property rights and other personal civil rights; (3) such other protection as the county commissioners may deem advisable and necessary.

Section 3. Such insurance shall be purchased from the county general fund.

Approved: March 27, 1973.

CHAPTER NO. 483

An Act to Amend Sections 66-3101, 66-3102, 66-3103, 66-3104, 66-3105, 66-3109, 66-3110 and 66-3112, R.C.M. 1947, Providing For Nursing Homes and Administrators; Defining Long-Term Care Facilities to Include Skilled Nursing Facilities and Intermediate Care Facilities -A, and Defining the Term Inactive Nursing Home Administrator; Changing the Composition of and Clarifying Who May Be Appointed to the Board; Providing For Qualification and Registration of Licensees; Providing For Inactive Nursing Home Administrators to Pay an Annual Fee of not More Than Twenty-five Dollars ($25); Requiring Nursing Home Administrators and Inactive Nursing Home Administrators to Complete a Continuing Education Course Prior to Renewal of Registration or License; Providing for a Penalty of up to Five Hundred Dollars ($500) Fine or Imprisonment up to Six (6) Months or Both; and Repealing Section 66-3113, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 66-3101, R.C.M. 1947, is amended to read as follows:

"66-3101. **Definitions.** For the purposes of this act, and as used herein:

(a) The term "board" means the board of nursing home administrators hereinafter created.

(b) The term "nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of *a long-term* care facility, whether such individual has an ownership interest in such *facility,* and whether his functions and duties are shared with one or more individuals.

(c) The term *"long-term care facility"* means any *skilled nursing* facility, nursing home *or intermediate care facility -A as* defined for licensing purpose under state law or pursuant to the rules and regulations for *long-term care facilities* by the department of health *and environmental sciences,* whether proprietary or nonprofit, including but not limited to, *such facilities* owned or administered by the state government or an agency or political subdivision thereof.

(d) The term "inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator, and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration."

Section 2. Section 66-3102, R.C.M. 1947, is amended to read as follows:

"66-3102. **Composition of the board.** There is hereby created the board of nursing home administrators which shall consist of five (5) *voting* members. *No more than two (2) of these members shall be nursing home administrators. The other three (3) members shall be representative of professions or institutions concerned with the care of chronically ill and infirm aged patients, but no two (2) of the latter shall be from the same profession and none may have a financial interest in any nursing home.* The *director* of the department of health *and environmental sciences,* or his designee, and the *director* of the department of *social and rehabilitation services,* or his designee, shall serve ex officio without the power to vote as members of such board. One (1) member shall be appointed for a term of three (3) years, two (2) members shall be appointed for a term of two (2) years, and two (2) members shall be appointed for a term of one (1) year; thereafter, the terms of all appointive members shall be three (3) years. The appointees shall be selected from a list of three (3) nominees submitted for each appointee, to the governor by the board of directors of the Montana nursing home association, inc.

Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term, from a list of three (3) names submitted to the governor by the board of directors of the Montana nursing home association, inc. Appointive members may be removed by the governor for cause after due notice and hearing. *No* person shall be eligible for appointment

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as a *nursing home administrator* member unless he is the holder of a license as a nursing home administrator."

Section 3. Section 66-3103, R.C.M. 1947, is amended to read as follows:

"66-3103. **Qualifications for licensure.** The board shall have authority to *register and* issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators. No *registration or* license shall be issued to a person as a nursing home administrator unless:

(a) He is of good character, of sound physical and mental health, *has received a high school diploma or its equivalent; and*

(b) Has satisfactorily completed a course of instruction and training prescribed by the board, which course shall be so designed as to content and so administered as to present sufficient knowledge of the needs properly to be served by *long-term care facilities;* laws governing the operation of *long-term care facilities* and the protection of the interests of patients therein; and the elements of good nursing home administration; or have presented evidence satisfactory to the board of sufficient education, training or experience in the foregoing fields to administer, supervise and manage a *long-term care facility;* and

(c) Has passed an examination administered by the board designed to test for competence in the subject matters referred to in subsection (b) hereof;

Provided, however, that *the* minimum standards for qualification shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act, as amended, 1967 (P.L. 90-248)."

Section 4. Section 66-3104, R.C.M. 1947, is amended to read as follows:

"66-3104. *Registration and licensing* **function.** (a) The board shall *register and* license nursing home administrators in accordance with rules and regulations issued, and from time to time revised by it. A nursing home administrator's *registration and* license shall not be transferable and shall be valid until surrendered for cancellation or suspended or revoked for violation of this act or any other laws or regulations relating to the proper administration and management of a *long-term care facility.* Denial of issuance or renewal, suspension or revocation under any section of this act shall be subject to review by the board upon the timely written request for review within thirty (30) days.

(b) If the board determines that preliminary qualifications set forth in 66-3103 (a) and (b) of this act, *will* have been met

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before the next examination it may issue a temporary permit for a period of one hundred eighty (180) days or until the *scores* of the next subsequent examination *are announced.* No temporary permit shall be issued to an applicant after the date of the first examination for which he is eligible."

Section 5. Section 66-3105, R.C.M. 1947, is amended to read as follows:

"66-3105. **Fees.** (a) Each person who applies for licensure, whether by waiver, examination or reciprocation, shall be required to pay a fee of twenty-five dollars ($25) at the time of such application.

(b) Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the board, not to exceed one hundred dollars ($100). A license shall expire on December 31, in the year for which it is issued, and shall be renewable annually upon timely payment of the license fee.

(c) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount of not more than twenty-five dollars ($25). An inactive registration shall expire on December 31, in the year for which it is issued, and shall be renewable annually upon timely payment of the inactive registration fee.

(d) The fee for issuing a duplicate license shall be ten dollars ($10)."

Section 6. Section 66-3109, R.C.M. 1947, is amended to read as follows:

"66-3109. **Duties of the board.** The board shall have the duty and responsibility to:

(a) Develop, impose and enforce standards which must be met by individuals in order to *register and* receive a license as a nursing home administrator, which standards shall be designed to ensure that nursing home administrators shall be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators.

(b) Develop and apply appropriate techniques, including examination and investigations, for determining whether individuals meet such standards.

(c) *Register and issue* licenses to individuals, after application of such techniques, determined to meet such standards, and

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for cause, after due notice and hearing, to revoke or suspend licenses previously issued by the board in any case where the individual holding such license is determined substantially to have failed to conform to the requirements of such standards. Provided, however, the board may, in its discretion, defer execution of its order of revocation or suspension for the purpose of permitting continuity of care for patients when the need for such continuity of care outweighs any harm or danger which might result from the failure of such nursing home administrator to be *registered and* licensed thereby resulting in the necessary closure of a *long-term care facility.*

(d) Establish and implement procedures designed to ensure that individuals *registered and* licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards.

(e) Upon receipt of a written and signed complaint, an investigation of the matter contained in the complaint shall be initiated. At its next meeting, the complaint shall be presented to the board together with the report of investigation and recommendations and on the basis thereof, the board shall determine whether to bring charges and provide for a hearing.

(f) Conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to *nursing home* administrators.

(g) Conduct, or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this act, and make provisions for the conduct of such courses and their accessibility to residents of this state, unless it finds that there are sufficient number of courses conducted by others within this state to meet the needs of the state. In lieu thereof the board may approve courses conducted within and without this state as sufficient to meet the education and training requirements of this act.

(h) Prescribe or approve continuing education courses."

Section 7. Section 66-3110, R.C.M. 1947, is amended to read as follows:

"66-3110. **Renewal of** *registration and* **license.** Every holder of a nursing home administrator's *registration and* license shall renew it annually by payment of the required fee for the next subsequent year, prior to the expiration of his currently valid *registration and* license on December 31. Renewals of *registrations or*

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licenses shall be granted as a matter of course, *providing the holder has completed a continuing education course prescribed or approved by the board, however,* if the board finds after due notice and hearing, that the applicant has acted or failed to act in such a manner, or under circumstances, as would constitute grounds for suspension or revocation of a *registration and* license, *it shall not issue the renewal."*

Section 8. Section 66-3112, R.C.M. 1947, is amended to read as follows:

"66-3112. **Misdemeanor.** It shall be unlawful for any person to act or serve in the capacity of a nursing home administrator unless he is the holder of a *registration and* license as a nursing home administrator, issued in accordance with the provisions of this act. *A person who violates the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment."*

Section 9. Section 66-3113, R.C.M. 1947, is repealed.

Approved: March 27, 1973.

CHAPTER NO. 484

An Act Repealing Section 84-1501.8, R.C.M. 1947, to Eliminate the Six and One-quarter Per Cent (6¼%) Corporation License Tax Rate for Taxable Years Ending After February 28, 1973; and Amending Section 84-1501, R.C.M. 1947, to Make Retroactive and Permanent the Six and Three-quarters Per Cent (6¾%) Corporation License Tax Rate.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-1501, R.C.M. 1947, is amended to read as follows:

"84-1501. **Corporation license tax — organizations exempt therefrom.** The term corporation includes associations, joint-stock companies, common law trusts and business trusts which do business in an organized capacity whether created under and pursuant to the state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided and except as provided in section 40-2821(5), R.C.M. 1947, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license

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fee for carrying on business in said state of Montana, such percentage or percentages of total net income received by such corporation in the perceding fiscal year from all sources within the state of Montana as hereinafter set forth; and every corporation, except as hereinafter provided, and except as provided in section 40-2821 (5), R.C.M. 1947, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth.

The percentage of net income to be paid under this section shall be six and three-quarters per cent (6¾%) of all net income for the taxable period. The rate set forth in this act shall be effective for all taxable years ending on or after February 28, 1971. *This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.* Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than fifty dollars ($50).

There shall not be taxed under this title any income received by any—

(a). Labor, agricultural or horticultural organization;

(b). Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

(c). Cemetery company owned and operated exclusively for the benefit of its members;

(d). Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e). Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f). Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

(g). Club organized and operated exclusively for pleasure,

recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h). Farmers' or other mutual hail, cyclone or fire insurance company, mutual ditch or irrigation company, mutual or co-operative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

(i). Any co-operative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a co-operative basis;

(j). Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k). In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function."

Section 2. Section 84-1501.8, R.C.M. 1947, is repealed.

Approved: March 27, 1973.

CHAPTER NO. 485

An Act Amending Section 34-301, R.C.M. 1947, Relating to Regulations of Certain Establishments; Amending Section 34-302, R.C.M. 1947, Relating to Definitions; Amending Section 34-303, R.C.M. 1947, Relating to Licenses Required; Amending Section 34-304, R.C.M. 1947, Relating to the Fee Charged for a License; Amending Section 34-306, R.C.M. 1947, Relating to Rules and Regulations and Cooperative Agreements; Providing for Related Matters; and Repealing Section 34-308, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 34-301, R.C.M. 1947, is amended to read as follows:

"34-301. **Control and regulation of establishments required**

by public interest. It is hereby found and declared that the public welfare requires control and regulation of the operation of establishments providing lodging space accommodations, as defined in section 2 [34-302] hereof, and the control, inspection, and regulation of persons engaged therein, in order to prevent or eliminate unsanitary and unhealthful conditions and practices which conditions and practices may endanger public health. It is further found and declared that the regulation of establishments providing lodging space accommodations as above outlined is in the interest of social well-being and the health and safety of the state and all of its people."

Section 2. Section 34-302, R.C.M. 1947, is amended to read as follows:

"34-302. **Definitions.** *Unless* the context *requires otherwise* in this act:

(a) "Person" includes *an* individual, partnership, corporation, association, county, municipality, co-operative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, tourist home, *retirement home or rooming house.*

(b) "Board" *means* board of health *and environmental sciences.*

(c) "Department" means the department of health *and environmental sciences.*

(d) "Hotel or motel" *includes a* building or structure kept, used, or maintained as or advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodging house or place where sleeping accommodations are furnished for a fee to transient guests with or without meals.

(e) "Tourist home" means *an* establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when *the* accommodations are offered for hire or rent for the use of the traveling public.

(f) "Transient guest" means a guest for only a brief stay, such as the traveling public.

(g) "Rooming house or retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three (3) or more persons on a weekly, semi-monthly, monthly or permanent basis; with or without meals, but without separate cooking facilities for individual occupants."

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Section 3. Section 34-303, R.C.M. 1947, is amended to read as follows:

"34-303. **License required.** Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, *retirement home or rooming house,* shall procure a license issued by the department. A separate license *is* required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed. Applications for *a* license shall be made in writing to the department on such forms and with such pertinent information as it *considers* necessary. *Existing licenses shall be renewed as a matter of right, unless conditions exist which are grounds for a cancellation or denial of a license.*

If determination is made to deny an initial application for a license, or if a renewal application is denied and a license canceled, the denial or cancellation shall be preceded by written notice of the grounds therefor and the opportunity to request a hearing before the board to show cause why the license should be denied."

Section 4. Section 34-304, R.C.M. 1947, is amended to read as follows:

"34-304. **Fee—term of license.** (a) There shall be paid to the department with each application for such license or for renewal of such license, an annual license fee of *ten* dollars *($10). These fees shall be deposited with the state treasury to the credit of the general fund.*

(b) Each license shall expire on December 31 following its date of issue, unless canceled for cause. Renewal may be obtained annually by paying the required annual license fee. Such license shall not be transferable nor be applicable to any premises other than that for which originally issued."

Section 5. Section 34-306, R.C.M. 1947, is amended to read as follows:

"34-306. **Rules—***cooperative* **agreements.** (a) The *department may adopt* and enforce rules to preserve the public health and safety. These rules shall relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal system, refuse collection and disposal, registration and supervision, *and fire and life safety code.*

(b) The department is hereby authorized to enter into co-

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operative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this act, or any part thereof."

Section 6. Section 34-308, R.C.M. 1947, is repealed.

Approved: March 27, 1973.

CHAPTER NO. 486

An Act to Amend Section 16-807, R.C.M. 1947, to Clarify the Limit of Indebtedness a County Can Incur as Being Five Per Cent (5%) of the Assessed Value of the Taxable Property in the County; and to Provide that any Single Purpose Indebtedness Exceeding Forty Thousand Dollars ($40,000) Be Submitted to the Voters.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-807, R.C.M. 1947, is amended to read as follows:

"16-807. **Limit of indebtedness.** No county must become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum of the *assessed* value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county are void. No county must incur any indebtedness or liability for any single purpose to an amount exceeding *forty* thousand dollars *($40,000)* without the approval of a majority of the electors thereof voting at an election to be provided by law."

Approved: March 27, 1973.

CHAPTER NO. 487

An Act Permitting Submission of Fingerprints in Connection with Retail Liquor and Beer Licenses.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. All applicants for a Montana retail liquor or beer license, including corporate officers, may be required by the department of revenue, when applying for said license to have their fingerprints taken for use in determining the eligibility of the applicant for such license.

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Section 2. This provision shall also apply to all who file a security interest against such license except as to banks, savings and loan institutions, and licensed lending agencies.

Approved: March 27, 1973.

CHAPTER NO. 488

An Act Relating to the Workmen's Compensation Act; Amending Section 92-418, R.C.M. 1947, Relating to the Definition of "Injury" or "Injured" to Provide for Broadened Coverage for Firemen; and Providing for an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 92-418, R.C.M. 1947, is amended to read as follows:

"92-418. **Injury or injured defined.** "Injury" or "injured" means:

(1) a tangible happening of a traumatic nature from an unexpected cause, or unusual strain, resulting in either external or internal physical harm, and such physical condition as a result therefrom and excluding disease not traceable to injury, *except as provided in subsection 2 of this section.*

(2) cardiovascular or pulmonary or respiratory diseases contracted by a paid fireman employed by a municipality, village or fire district as a regular member of a lawfully established fire department, which diseases are caused by over-exertion in times of stress or danger in the course of his employment by proximate exposure or by cumulative exposure over a period of four (4) years or more to heat, smoke, chemical fumes, or other toxic gases."

Section 2. Nothing herein shall be construed to exclude any other working person who suffers a cardiovascular, pulmonary or respiratory disease while in the course and scope of his employment.

Section 3. This act is effective on its passage and approval.

Approved: March 27, 1973.

CHAPTER NO. 489

An Act to Amend Section 84-301, R.C.M. 1947, Relating to Taxation and Classification of Rights of Entry.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. **Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land *or received by mesne conveyance (exclusive of leasehold interests), devise or succession* by any person or corporation, the surface title to which has passed to *or remains in* another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1¼) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under-

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contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this subsection (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

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Class Seven. (a) **All new industrial property.** New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state board of equalization, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state board of equalization in such manner and form as may be required by said board.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a

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married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit before the county assessor of the county in which said property is located, on a form as may be provided by the state board of equalization supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class.

Class Nine. **Freeport merchandise.** Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state board of equalization in such manner or form as may be required by said board.

The state board of equalization shall establish standards, rules and regulations for the guidance of county assessors and assessing freeport merchandise.

Class Ten. All property not included in the nine (9) preceding classes."

Approved: March 27, 1973.

CHAPTER NO. 490

An Act Appropriating Three Hundred Thousand Dollars ($300,000) from the General Fund and Appropriating all Federal and Private Funds Received for the Purposes of this Act from the Federal and Private Revenue Fund to the Commission Created by this Act for the Biennium Ending June 30, 1975, for Con-

ducting a Comprehensive Study of and Planning for Post-Secondary Education in Montana; and Establishing a Commission on Post-Secondary Education.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. (1) As authorized by article VI, section 7, of the Montana constitution, there is created a temporary commission to be known as the commission on post-secondary education.

(2) The commission consists of not more than thirty (30) members appointed by the governor to serve at his pleasure.

(3) The commission shall be broadly representative of the general public and public and private nonprofit and proprietary institutions of post-secondary education in the state, including community colleges, junior colleges, post-secondary vocational schools, area vocational schools, technical institutes, four (4) year institutions of higher education, and branches thereof.

(4) The governor shall appoint the chairman of the commission. The commission members may elect a vice-chairman, secretary, and other necessary officers from among their members.

Section 2. The chairman shall schedule meetings of the commission as considered necessary, but meetings shall be held at least bimonthly. A majority of the commission may also call a meeting.

Section 3. Members of the commission are entiled to compensation of twenty-five dollars ($25) per day, and to reimbursement for actual and necessary expenses, while on commission business.

Section 4. The commission shall make a detailed and thorough study of post-secondary education in this state. It shall also make comprehensive inventories of, and studies with respect to, all public and private post-secondary educational resources in the state, including planning necessary for such resources to be better coordinated, improved, expanded, consolidated, or altered so that all persons within the state who desire, and who can benefit from, post-secondary education may have an opportunity to do so. The commission shall further devise a system of accountability that will accurately measure educational output in relation to financial input. The commission may use other state agencies or institutions to make studies, conduct surveys, submit recommendations, or otherwise contribute services or expertise to the commission in conducting its activities under this act.

Section 5. The commission shall, before undertaking other activities, assess the evidence and resulting recommendations made in prior studies relating to post-secondary education in Montana. These studies include, but are not limited to, the Peabody Report,

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the Flesher Report, the Durham Report, the Regents' Master Plan and various studies by the legislative council.

Section 6. A written report with substantive recommendations adopted by the commission, and recommendations regarding implementing legislation, shall be made available to the governor, the members of the legislature, and the members of the state board of education no later than December 1, 1974.

Section 7. Three hundred thousand dollars ($300,000) is appropriated from the general fund to the commission for the biennium ending June 30, 1975, for conducting the study and planning authorized by this act.

Section 8. All federal and private funds received for the purposes of this act are appropriated from the federal and private revenue fund to the commission for the biennium ending June 30, 1975.

Section 9. The funds appropriated by section 6 may be used to match any federal or private funds available for conducting the study and planning authorized by this act. However, an amount from the funds appropriated under section 7, equal to the amount received in federal and private funds, shall revert to the general fund, and may not be expended by the commission.

Section 10. On behalf of and for the commission, the governor shall make application for any federal funds available for the study and planning authorized by this act, and he may enter into any contracts required for receipt of federal funds with the appropriate federal agency.

Approved: March 27, 1973.

CHAPTER NO. 491

An Act Providing for the Minimum Number of Justices of the Peace, their Compensation, Qualifications, Terms of Office, Training and Designation as County Officers; Providing for the Collection of Fees by Justices and Improvement of their Facilities; Abolishing Fees in Criminal Actions; and Deleting References to Townships; all to Comply with Article VII, Sections 5 and 7 of the 1972 Montana Constitution; Amending Sections 11-727, 16-2403, 16-2404, 16-2406, 25-307, 93-401 through 93-403, 93-405, 93-704, 93-1602, 93-6601, 93-6602, 93-6706, 93-6903, 93-7302, 93-7311, 93-7402, 93-7605, 93-7607, 93-7704, 93-7709, 93-9705, R.C.M. 1947; and Repealing Sections 25-303, 25-305 and 25-306, R.C.M. 1947.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The board of county commissioners shall set salaries for justices of the peace by resolution, provided that:

(1) if the salary of the justice of the peace was determined on a fee basis for the years 1971 and 1972, he shall receive a monthly salary of not less than one-eighteenth of the total fees, civil and criminal, collected by the justice or his predecessor in office during the two (2) years, 1971 and 1972;

(2) if the salary of the justice of the peace was determined on a non-fee basis for the years 1971 and 1972, the justice shall be paid not less than the highest salary earned by the justice or his predecessor for the years 1971 and 1972.

Section 2. In the resolution providing for the salary the county commissioners shall designate the office hours for each justice. Office hours shall be commensurate with the salary provided.

Section 3. (1) The board of county commissioners of the county in which the justice of the peace has been elected or appointed shall provide for the justices of the peace:

(a) the office, courtroom and clerical assistance necessary to enable him to perform his duties in dignified surroundings;

(b) the books, records, forms, papers, stationery, postage, office equipment and supplies necessary in the proper keeping of the records and files of the judicial office and the transaction of the business;

(c) the latest edition of the Revised Codes of Montana and all official supplements thereto.

(2) All actual and necessary expenses incurred by the justice of the peace in the performance of his official duties is a legal charge against the county.

Section 4. Section 93-401, R.C.M. 1947, is amended to read as follows:

"93-401. **Justices' courts and justices.** *(1)* There must be at least *one (1) justice court* in each *county* of the state, for which *one (1) justice* of the peace must be elected by the qualified electors of the *county* at the general state election next preceding the expiration of the term of office of his predecessor.

(2) A justice of the peace shall be nominated and elected on the non-partisan judicial ballot in the same manner as are judges of the district court. Each judicial office shall be a separate and

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independent office for election purposes and each office shall be numbered by the county commissioners and each candidate for justice of the peace shall specify the number of the office for which he seeks to be elected. A candidate may not file for more than one (1) office. Section 23-4511 prohibiting political party endorsement for judicial officers shall also apply to justices of the peace.

(3) Each justice of the peace, elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office take the constitutional oath of office, which must be filed with the county clerk.

(4) Before the county clerk may file the oath the elected or appointed justice must satisfy the clerk that he is either:

(a) an attorney at law authorized to practice law in the state of Montana, or

(b) a person who has held the office of justice of the peace within the preceding five (5) years, or

(c) a person who has completed the orientation course of study held under the direction of the Montana Magistrates Association of the state of Montana; or if a person is appointed after the course is offered he must agree to take the course at the next offering and failure to do so will disqualify him.

(5) The Montana Magistrates Association shall present a course of study within four (4) weeks following each general election. Mileage and per diem shall be paid the elected or appointed justice of the peace for attending the course and shall be a proper charge against the county wherein the justice of the peace will hold court."

Section 5. Section 11-727, R.C.M. 1947, is amended to read as follows:

"11-727. **Compensation of justices of the peace acting as police judge.** In towns, the council may designate a justice of the peace of the *county* in which the town is situated to act as police judge, and may by ordinance fix his compensation for his services, not exceeding one hundred dollars per annum, and the justices of the peace so designated must act as a police judge in all cases arising out of a violation of ordinances where the town is a party."

Section 6. Section 93-402, R.C.M. 1947, is amended to read as follows:

"93-402. **Courts — where held — when open for business.** A justice's court may be held at any place selected by the justice holding the same, in the *county* for which he is elected or appointed; and such court is always open for the transaction of business, except on legal holidays and non-judicial days"

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Section 7. Section 93-403, R.C.M. 1947, is amended to read as follows:

"93-403. **Holding court for another justice within county.** A justice of the peace of any *county* may hold the court of any other justice of the peace of the same county at his request, and while so acting is vested with the power of the justice for whom he so holds court, in which case the proper entry of the proceedings before the attending justice, subscribed by him, must be made in the docket of the justice for whom he so holds the court."

Section 8. Section 93-405, R.C.M. 1947, is amended to read as follows:

"93-405. **Terms of office.** The term of office of justices of peace is *four (4)* years from the first Monday in January next succeeding their election."

Section 9. Section 25-307, R.C.M. 1947, is amended to read as follows:

"25-307. **Collection and disposition of fees — itemized statement.** Justices of the peace shall collect the fees prescribed by law for justices of the peace and shall pay the same into the county treasury of the county wherein they hold office, on the first day of each month, to be credited to the contingent fund of *the* county; and shall also file an itemized statement showing all fees received during the preceding month in connection with his office; said statement shall also state that all fees required by law to be paid in connection with matters pending before him as *a* justice during the preceding month have been paid to him, and by him paid into the county treasury, and listed in said itemized statement, and that he has not received or been promised, nor has any one else received or been promised for him, any other moneys, emolument, or thing whatsoever by virtue of or in connection with his office; and said statement shall be subscribed and sworn to by the justice. This section, however, shall not apply to "miscellaneous fees" excepted by section 25-304, supra."

Section 10. Section 16-2404, R.C.M. 1947, is amended to read as follows:

"16-2404. **Township officers.** The officers of townships are two constables, and such other inferior and subordinate officers as are provided for elsewhere in this code, or by the board of county commissioners."

Section 11. Section 16-2403, R.C.M. 1947, is amended to read as follows:

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"16-2403. **County officers enumerated.** The officers of a county are:

A treasurer;

A county clerk;

A clerk of the district court;

A sheriff;

A county auditor, except in the sixth, seventh, and eighth class counties;

A county attorney;

A surveyor;

A coroner;

A public administrator;

An assessor;

A county superintendent of common schools;

A board of county commissioners*;*

At least one (1) justice of the peace."

Section 12. Section 16-2406, R.C.M. 1947, is amended to read as follows:

"16-2406. **County and other officers, when elected and term of office.** There shall be elected in each county the following county officers who shall possess the qualifications for sufferage prescribed by the constitution of the state of Montana, and such other qualifications as may be prescribed by law:

One county clerk who shall be clerk of the board of county commissioners and ex officio recorder; one sheriff; one treasurer, who shall be collector of the taxes; provided, that the county treasurer shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator*; and at least one (1) justice of the peace.* Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified.

The county attorneys, county auditors, and all elective township officers, must be elected at each general election as now provided by law. The officers mentioned in this act must take office on the first Monday of January next succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

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Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated *with the exception of the office of the justice of the peace, which office may not be combined or consolidated with any other office other than another justice of the peace office;* however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid officers, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order."

Section 13. Section 93-704, R.C.M. 1947, is amended to read as follows:

"93-704. **Residence and qualifications of justices of the peace.** Every justice of the peace must reside in the *county* in which his court is held, and no person is eligible to the office of justice of the peace unless he shall have been a citizen of the United States and a resident of the county, in which he is to serve, for one year next preceding his election or appointment."

Section 14. Section 93-1602, R.C.M. 1947, is amended to read as follows:

"93-1602. **How to be summoned.** Such jurors must be summoned from the persons competent to serve as jurors, residents of the *county,* city, or town in which such court has jurisdiction, by notifying them orally that they are summoned, and of the time and place at which their attendance is required."

Section 15. Section 93-6601, R.C.M. 1947, is amended to read as follows:

"93-6601. **Where actions must be commenced.** Actions in justices' courts may be commenced, and, subject to the right to change the place of trial, as in this chapter provided, may be tried:

1. When the defendant, or all the defendants, if there be more than one, reside in another county than that in which the

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right of action accrues, and the action be for the recovery of personal property, or the value thereof, or damages for taking or detaining the same; in the county in which the property, or any part thereof, may be found, or in which the property, or any part thereof, was taken, or in which the defendant or either of the defendants reside;

2. When the defendant, or all of the defendants, if there be more than one, reside in another county than that in which the right of action accrues, and the action be for damages for violation of an express or implied contract, or for money due on an express or implied contract, debt, note, or account; in the county in which such contract or obligation is to be or was to have been performed, or such money is to be or was to have been paid, or in which the defendant or either of the defendants resides; and the county in which the obligation is incurred shall be deemed to be the county in which it is to be performed or paid, unless there is a special contract to the contrary;

3. When the defendant, or all of the defendants, if there be more than one, reside in another county than that in which the right of action accrues, and the action be for damages for injury to person, property, or reputation; in the county where the injury was committed, or in which the defendant or either of the defendants reside;

4. When the defendant is a nonresident of the county; in any county where he may be found and served with summons personally;

5. When the defendant is a nonresident of the state; in any *county* of the state;

6. When the parties voluntarily appear and plead, without summons; in any *county* of the state;

7. In all other cases; in any county in which the defendant, or any one of the defendants, if there be more than one, reside, or may be found and served with summons personally."

Section 16. Section 93-6602, R.C.M. 1947, is amended to read as follows:

"93-6602. **Place of trial may be changed in certain cases.** The court may, at any time before trial, on motion, change the place of trial in the following cases:

1. When it appears to the satisfaction of the justice before whom the action is pending, by affidavit of either party, that such justice is a material witness for either party.

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2. When either party makes and files an affidavit that he cannot have a fair and impartial trial before such justice, by reason of the interest, prejudice, or bias of the justice.

3. When a jury has been demanded, and either party makes and files an affidavit that he cannot have a fair and impartial trial, on account of the bias or prejudice of the citizens of the *county,* town, or city against him.

4. When, from any cause, the justice is disqualified from acting.

5. When the justice is sick or unable to act."

Section 17. Section 93-6706, R.C.M. 1947, is amended to read as follows:

"93-6706. **Summons — how issued, directed and what to contain.** The summons must be directed to the defendant and signed by the justice, and must contain:

1. The title of the court, the name of the county and city in which the action is commenced, and the names of the parties thereto;

2. A sufficient statement of the cause of action, in general terms, to apprise the defendant of the nature of the claim against him, but a copy of the complaint in the action when served with the copy of the summons upon defendant in lieu of said statement, is sufficient;

3. A direction that the defendant appear and answer before the justice, at his office, as specified in the next section. And that if he fail to appear and answer, judgment will be taken against him according to the complaint."

Section 18. Section 93-6903, R.C.M. 1947, is amended to read as follows:

"93-6903. **A defendant arrested must be taken before the justice immediately.** The defendant, immediately upon being arrested, must be taken to the office of the justice who made the order, and if he is absent or unable to try the action, or if it appears to him by the affidavit of defendant that he is a material witness in the action, the officer must immediately take the defendant before another justice of the *county,* if there is another, and if not, then before a justice of an adjoining *county,* who must take jurisdiction of the action, and proceed thereon as if the summons had been issued and the order of arrest made by him."

Section 19. Section 93-7302, R.C.M. 1947, is amended to read as follows:

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"93-7302. **Judgment of dismissal entered in certain cases without prejudice.** Judgment that the action be dismissed without prejudice to a new action, may be entered with costs in the following cases:

1. When the plaintiff voluntarily dismisses the action, at or before the close of his evidence, when there is no counterclaim.

2. When he fails to appear at any time within five days after default has been entered, or at the time to which the action has been postponed.

3. When, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the court.

4. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county; but if the objection is taken and overruled, it is the cause of a reversal on appeal, and does not otherwise invalidate the judgment; if not taken at the trial, it is waived."

Section 20. Section 93-7311, R.C.M. 1947, is amended to read as follows:

"93-7311. **Abstract of judgment.** The justice, on the demand of a party in whose favor judgment is rendered, must give him an abstract of the judgment in substantially the following form (filling blanks according to the facts):

"State of Montana

County of .....

....., plaintiff, v. ....., defendant.

In justice's court, before ....., justice of the peace, ... *county,* ....., 19.... (inserting date of abstract). Judgment entered for plaintiff (or defendant) for $....., on the ..... day of ..... I certify that the foregoing is a correct abstract of a judgment rendered in said action in my court, or (as the case may be) in the court of ....., justice of the peace, as it appears by his docket, now in my possession, as his successor in office.

....., Justice of the Peace."

Section 21. Section 93-7402, R.C.M. 1947, is amended to read as follows:

"93-7402. **Form of execution.** The execution must be directed to the sheriff or to a constable of the county, and must be subscribed by the justice and bear date the day of its issuance. It must intelligibly refer to the judgment, by stating the names of the

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parties, and the name of the justice before whom, and of the county where, and the time when, it was rendered; the amount of the judgment, if it be for money; and if less than the whole is due, the true amount due thereon. It must contain, in like cases, similar directions to the sheriff or constable as are required by the provisions of sections 93-5801 to 93-5845, in an execution to the sheriff, except that it shall not direct the officer to in any manner levy upon or satisfy the judgment, or any interest thereon, from any real property."

Section 22. Section 93-7605, R.C.M. 1947, is amended to read as follows:

"93-7605. **Proceedings when office becomes vacant and before a successor is appointed.** If the office of a justice become vacant by his death or removal from the *county,* or otherwise, before his successor is elected and qualified, the docket and papers in possession of such justice must be deposited in the office of some other justice in the *county,* to be by him delivered to the successor of such justice. If there is no other justice in the *county,* then the docket and papers of such justice must be deposited in the office of the county clerk, to be by him delivered to the successor in office of the justice."

Section 23. Section 93-7607, R.C.M. 1947, is amended to read as follows:

"93-7607. **Justice elected to fill vacancy.** The justice elected to fill a vacancy is the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take office in the same *county* from that time is the successor."

Section 24. Section 93-7704, R.C.M. 1947, is amended to read as follows:

"93-7704. **In case of disability of justice, another justice may attend on his behalf.** In case of the sickness or other disability, or necessary absence of a justice, on a return of a summons, or at the time appointed for a trial, another justice of the same *county,* or adjoining *county* may, at his request, attend in his behalf, and thereupon is vested with the power, for the time being, of the justice before whom the summons was returnable. In that case, the proper entry of the proceedings before the attending justice, subscribed by him, must be made in the docket of the justice before whom the summons was returnable. If the case is adjourned, the justice before whom the summons was returnable may resume jurisdiction."

Section 25. Section 93-7709, R.C.M. 1947, is amended to read as follows:

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"93-7709. **Special constables—appointment.** If in any township there should be no duly elected, appointed, or qualified constable, but not otherwise, a justice of the peace in *the county* may, at the request of a party, after being satisfied that it is expedient to do so, specially depute any proper person of suitable age not interested in the action to serve a summons, with or without an order to arrest the defendant, or with or without a writ of attachment, or to serve an execution. The justice shall be liable upon his official bond for all official acts of the person so deputed. Such deputation shall be in writing made on the process, and a note thereof made on the justice's docket."

Section 26. Section 93-9705, R.C.M. 1947, is amended to read as follows:

"93-9705. **What courts have jurisdiction.** The district court of the county in which the property, or some part of it, is situated, shall have jurisdiction of proceedings under this chapter; provided, that justices' courts, within their respective *counties,* shall have concurrent jurisdiction."

Section 27. Sections 25-303, 25-305, and 25-306, R.C.M. 1947, are repealed.

Approved: March 29, 1973.

CHAPTER NO. 492

An Act Providing for Exempted Employments from Coverage Under the Workmen's Compensation Act; and Repealing Section 92-202, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-202.1, R.C.M. 1947, which reads as follows:

92-202.1 **Employments exempted from coverage.** This act shall not apply to any of the following employments unless the employer elects coverage under this act:

(1) Household employment.

(2) Casual employment.

(3) Employment of members of an employer's family dwelling in his household.

(4) Employment of sole proprietors or working members of a partnership.

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(5) Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States.

(6) Any person performing services in return for aid or sustenance only.

Section 2. Section 92-202, R.C.M. 1947, is repealed.

Approved: March 29, 1973.

CHAPTER NO. 493

An Act Providing for Election of Employers and Employees to Come Under the Workmen's Compensation Act; Providing for Actions Against Third Party Causing Injury; Providing for a Right to Subrogation; and Repealing Section 92-204, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-204.1, R.C.M. 1947, which reads as follows:

92-204.1. **Election of employer and employee to come under act—action against third party causing injury—right to subrogation.** Where both the employer and employee have elected to come under this act, the provisions of this act shall be exclusive, and such election shall be held to be a surrender by such employer and the servants, and employees of such employer and such employee, as among themselves, of their right to any other method, form or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action at law, suit in equity, or statutory or common-law right or remedy, or proceeding whatever, for or on account of any personal injury to or death of such employee, except as such rights may be hereinafter specifically granted; and such election shall bind the employee himself, and in case of death shall bind his personal representative, and all persons having any right or claim to compensation for his injury or death, as well as the employer, and the servants and employees of such employer, and those conducting his business during liquidation, bankruptcy or insolvency. The right to compensation and medical benefits as provided by this act shall not be affected by the fact that the injury, occupational disease or death is caused by the negligence of a third party other than the employer, or the servants or employees of the employer. Whenever such event shall occur to an employee while performing the duties of his employment and such

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event shall be caused by the act or omission of some persons or corporations other than his employer, or the servants or employees of his employer, then such employee, or in case of his death his heirs or personal represetative shall, in addition to the right to receive compensation under this act, have a right to prosecute any cause of action he may have for damages against such persons or corporations. Further provided, that whenever such employee shall receive an injury while performing the duties of his employment and such injury or injuries, so received by such employee, are caused by the intential and malicious act or omission of a servant or employee of his employer, then such employee, or in case of his death, his heirs or personal representatives, shall, in addition to the right to receive compensation under the Workmen's Compensation Act, have a right to prosecute any cause of action he may have for damages against such servants or employees of his employer, causing such injury. Provided, that the employer or insurer shall be entitled to full subrogation for all compensation and benefits paid or to be paid under this act, except as otherwise provided in this section. The employer's or insurer's right of subrogation shall be a first lien on such claim, judgment or recovery. The employee shall institute such third party action after giving the employer or insurer reasonable notice of his intention to institute such third party action. The employee may request that such insurer pay a proportionate share of the reasonable cost, including attorneys' fees, of such third party action. The insurer may elect not to participate in the cost of the third party action, but as such election is made the insurer shall be deemed to have waived fifty per cent (50%) of its subrogation rights granted by the section. Provided, however, that if an employee refuses or fails to institute such action within one (1) year from the date of injury, the employer or insurer may institute such third party action in his name and for his benefit or that of his personal representative. If the employee or his personnal representative institutes such third party action, he shall be entitled to at least one-third (1/3) of the amount recovered by judgment or compromise settlement less his proportionate share of the reasonable costs, including attorneys' fees, in the event the amount of recovery is insufficient to provide him with that amount after payment of subrogation. In the event the employer or insurer institutes such third part action, he shall pay to the employee any amount recovered by judgment or settlement which is in excess of the amounts paid or to be paid under this act an employer's or insurer's reasonable costs and attorneys' fees. Nothing contained in this section shall prevent the employer or insurer, including the division of workmen's compensation, from entering into compromise agreements in settlement of subrogation rights. If death

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results from the injury or occupational disease, the employer shall have a right of action against the third party for recovery of any amount paid under this act, and such right of action shall be in addition to any cause of action by the heirs or personal representative of the deceased. In the event that the amount of compensation and benefits payable under this act shall not have been fully determined at the time such employee or his heirs or personal representative, or the employer or insurer, shall receive settlement of his action, prosecuted as aforesaid, then the division shall determine what proportion of such settlement shall be allocated under subrogation and such determination may be appealed as any other determination of the division.

Section 2. Section 92-204, R.C.M. 1947, is repealed.

Approved: March 29, 1973.

CHAPTER NO. 494

An Act to Provide that the Fee of Two Dollars ($2) For Issuance of Decals For Snowmobiles Shall Be Deposited with the State Treasurer to the Credit of the State Fish and Game Commission; Amending Section 53-1025, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 53-1025, R.C.M. 1947, is amended to read as follows:

"53-1025. **Display of tax-paid decals on snowmobiles required—application and issuance.** No snowmobile shall be operated by any person in the state of Montana unless there is displayed in a conspicuous place thereon a decal as visual proof that Montana personal property taxes have been paid thereon for the current year. Application for the issuance of such tax-paid decal shall be made to the state *department of revenue or the county treasurer* upon forms to be furnished for this purpose, which may be obtained from the *department* or at the county assessor's office in the county wherein the owner resides, and is to provide for substantially the following information: name of owner, address, registration number, name of manufacturer, model number, make, horsepower, year of manufacture, statement evidencing assessment, payment of property tax, and such other information as the *department* may require. Said application shall be signed by the *county treasurer* and transmitted *by him* to the *department* accompanied by a fee of *two dollars ($2). All moneys collected from payment of such fees shall be turned over to the state treasurer and placed by him in the earmarked revenue*

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fund to the credit of the state fish and game commission, with one dollar ($1) designated for use in enforcing the purposes of this act and one dollar ($1) designated for use in developing snowmobile facilities. Upon receipt of the application in approved form the *department or county treasurer* shall issue to the applicant a decal in the style and design prescribed by the *department* and of a different color than the preceding year, numbered numerically."

Section 2. In the event any registration receipt or decal shall be lost, mutilated or become illegible, the persons to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon payment of a fee of one dollar ($1) to the county treasurer.

Section 3. (1) A dealer registration certificate shall be issued in accordance with this act.

(2) Upon receipt of dealer application and payment of fees which will be five dollars ($5), the dealer shall be issued two (2) dealer snowmobile identification cards which will be carried by dealer or dealer's customer when operating or demonstrating dealer's snowmobiles.

(3) No bond will be required of the dealer.

(4) Additional dealer snowmobile identification cards may be purchased by the dealer for a fee of two dollars ($2).

Approved: March 29, 1973.

CHAPTER NO. 495

An Act to Amend Sections 59-801, 59-802, 59-538 and 59-539, R.C.M. 1947, to Increase Mileage and Per Diem Allowances For Public Employees and Officers.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 59-801, R.C.M. 1947, is amended to read as follows:

"59-801. **Mileage of all officers.** Members of the legislative assembly, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles or airplanes in the performance of official duties, shall be entitled to collect mileage at a rate of *twelve cents (12¢)* per mile for the distance actually traveled by automobile, and at the rate of twelve cents (12¢) per mile *by the shortest regularly traveled automobile route when travel*

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is by private plane, and no more unless otherwise specifically provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310."

Section 2. Section 59-802, R.C.M. 1947, is amended to read as follows:

"59-802. **Mileage of all officers—liability of approving board for exceeding authorized amount.** Whenever it shall be necessary for any state or county officer or employee to use his own automobile or airplane in the performance of any official duty where traveling expense is allowed by law, such officer or employee, except sheriffs, shall receive *twelve cents (12¢)* per mile for each mile necessarily traveled by automobile and twelve cents (12¢) per mile *by the shortest regularly traveled automobile route when travel is by private plane, and no more* unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310."

Section 3. Section 59-538, R.C.M. 1947, is amended to read as follows:

"59-538. **Expenses of persons in state service—per diem allowance.** Every person engaged in any service in every department of state, except the governor, the lieutenant governor, and the attorney general, state auditor, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, clerk of the supreme court and justices of the supreme court who shall be paid actual and necessary expenses as hereinafter provided exclusive of persons in appointive positions, or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, supervisory or extension work or otherwise, of every kind and character, shall be allowed, for the time engaged in such travel, *sixteen dollars ($16)* per day for such travel within the state of Montana, and for travel outside the state of Montana the sum of *twenty-five dollars ($25)* per day for meals and other necessary expenses; except that for travel within the District of Columbia the sum of *thirty dollars ($30)* per day shall be allowed and provided, that the provisions of this act shall not apply to persons holding offices specifically provided for in section 93-305, or section 93-313; provided that nothing herein contained shall be construed as affecting the validity of section 43-310. The governor

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shall be authorized actual and necessary expenses not to exceed sixty dollars ($60) per day when engaged in state service away from Helena, Montana. The lieutenant governor, when directed by the governor to engage in state service, the attorney general, state auditor, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, clerk of supreme court and justices of supreme court shall be authorized actual and necessary expenses not to exceed forty dollars ($40) per day while engaged in state service away from Helena, Montana."

Section 4. Section 59-539, R.C.M. 1947, is amended to read as follows:

"59-539. **Computation of per diem allowance.** In computing the per diem in lieu of subsistence for continuous travel of more than twenty-four (24) hours, the calendar day, midnight to midnight, shall be the unit, and for fractional parts of a day at the commencement or ending of such continuous travel, constituting a travel period, one-fourth (¼) of the rate for a calendar day shall be allowed for each period of six (6) hours or fraction thereof. When a change in the per diem rate is made during a day, the rate of per diem in effect at the beginning of the quarter in which the change occurs shall continue to the end of such quarter. For continuous travel of twenty-four (24) hours or less, constituting a travel period, such period shall be regarded as commencing with the beginning of the travel and ending with the completion thereof, and for each six (6) hour portion of the period or fraction thereof one-fourth (¼) of the rate for a calendar day shall be allowed; provided, however, that no per diem, excepting an allowance not to exceed *two dollars ($2)* per day for moneys actually expended for mid-day meals, shall be allowed when the departure is at or after 8:00 a.m. and the return on the same day is at or prior to 6:00 p.m. In no case shall any per diem or allowance whatsoever be paid for any absence not exceeding three (3) hours."

Approved: March 29, 1973.

CHAPTER NO. 496

An Act Amending Section 82-1918, R.C.M. 1947; Providing For Contracts for the Lease-Purchase of Buildings To Be Made For Longer Than Three Years; and Authorizing the State Purchasing Agent Subject to the Approval of the Legislature As Part of the Long-Range Building Program to Enter Into Contracts for the Lease-Purchase of Buildings.

Be it enacted by the Legislative Assembly of the State of Montana:

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Section 1. Section 82-1918, R.C.M. 1947, is amended to read as follows:

"82-1918. **Contracts limited to three years.** *(1)* No contracts, *except those provided for in subsection 2 of this section,* shall be made for a longer period than three (3) years and such contract shall provide for the delivery of such articles at such times and in such quantities as the purchasing agent may determine.

(2) The state purchasing agent subject to the approval of the legislature as part of the long-range building program and subject to non-binding, public bids if more than one person or company is prepared to enter into such contract may enter into rental contracts for buildings required by the state which provide an option to purchase if the best interest of the state is served by the contract. The contract may provide an option to purchase provision subject to the limitation that such option must be exercised within twenty (20) years from the date the contract is executed.

(3) All buildings built or leased or purchased under this act must comply with all laws, safety codes, rules and regulations of the state of Montana."

Approved: March 29, 1973.

CHAPTER NO. 497

An Act to Create the Resource Indemnity Trust Account in the Trust and Legacy Fund and to Provide for the Funding of the Account by Imposing a Tax on the Gross Value of Product of all Nonrenewable Resource Extracting Industries.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 84-7001, R.C.M. 1947, which reads as follows:

84-7001. This act shall be known and may be cited as "The Montana Resource Indemnity Trust Act."

Section 2. There is a new section to be numbered 84-7002, R.C.M. 1947, which reads as follows:

84-7002. It is the policy of this state to provide security against loss or damage to our environment from the extraction of nonrenewable natural resources. Recognizing that the total environment consists of our air, water, soil, flora, fauna, and also of those social, economic, and cultural conditions that influence

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our communities and the lives of our individual citizens, it is necessary that this state be indemnified for the extraction of those resources. Therefore, it is the purpose of this chapter to provide for the creation of a resource indemnity trust in order that the people and resources of Montana may long endure.

Section 3. There is a new section to be numbered 84-7003, R.C.M. 1947, which reads as follows:

84-7003. As used in this act:

(1) "Person" means and includes every individual, partnership, firm, association, joint-stock company, syndicate and corporation.

(2) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(3) "Gross value of product" means the market value of any merchantable mineral extracted or produced during the taxable year.

(4) "Total environment" means air, water, soil, flora, fauna, and also the social, economic, and cultural conditions that influence communities and individual citizens.

(5) "Department" means department of revenue.

Section 4. There is a new section to be numbered 84-7004, R.C.M. 1947, which reads as follows:

84-7004. For the purpose of carrying out this act there is a resource indemnity trust account in the trust and legacy fund. The resource indemnity account shall be credited with all moneys received as herein provided.

Section 5. There is a new section to be numbered 84-7005, R.C.M. 1947, which reads as follows:

84-7005. A person who engages in or carries on the business of mining, extracting, or producing a mineral from any quartz vein or lode, placer claim, dump or tailings, or other place or source, shall on or before March 31 of each year make out a statement of gross yield of the mineral from each mine owned or worked by that person during the year preceding January 1 of the year in which the statement is made, and the value thereof. This form shall be in the form prescribed by the department, and shall be verified by the oath of the person, or the manager, superintendent, agent, president, or vice-president of the corporation, association,

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or partnership, if any, and shall be delivered to the department on or before March 31. The statement shall show the following:

(1) The name and address of the owner or lessee or operator of the mine.

(2) The description and location of the mine.

(3) The quantity of minerals extracted, produced, and treated or sold from the mine during the period covered by the statement.

(4) The amount and character of the mineral and the total yield of the mineral from the mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas or other commercially valuable constituents of the ores or mineral products or deposits measured by standard units of measurement, yielded to the person engaged in mining.

(5) The gross yield or value in dollars and cents.

Section 6. There is a new section to be numbered 84-7006, R.C.M.1947, which reads as follows:

84-7006. The annual tax to be paid by the person engaged in or carrying on the business of mining, extracting, or producing a mineral shall be twenty-five dollars ($25), together with an additional sum or amount computed on the gross value of product which may have been derived from the business work or operation within this state during the calendar year immediately preceding, at the rate of one-half of one per cent (½ of 1%) of the amount of gross value of product at the time of extraction from the ground, if in excess of five thousand dollars ($5,000).

Section 7. There is a new section to be numbered 84-7007, R.C.M. 1947, which reads as follows:

84-7007. The tax imposed by this act shall be paid by each person to which the tax applies on or before March 31 on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax shall be paid to the department at the time that the statement of yield is filed with the department.

Section 8. There is a new section to be numbered 84-7008, R.C.M. 1947, which reads as follows:

84-7008. The department shall issue a receipt for the tax and promptly turn the tax over to the state treasurer for deposit in the resource indemnity trust account of the trust and legacy fund.

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Section 9. There is a new section to be numbered 84-7009, R.C.M. 1947, which reads as follows:

84-7009. All moneys paid into the resource indemnity trust account shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust account shall annually be added thereto until it has reached the sum of ten million dollars ($10,000,000). Thereafter only the net earnings may be appropriated and expended until the account reaches one hundred million dollars ($100,000,000). Thereafter all net earnings and all receipts shall be appropriated by the legislature and expended provided that the balance in the account may never be less than one hundred million dollars ($100,000,000).

Section 10. There is a new section to be numbered 84-7010, R.C.M. 1947, which reads as follows:

84-7010. Any funds made available under this act shall be used and expended to improve the total environment and rectify damage thereto.

Section 11. There is a new section to be numbered 84-7011, R.C.M. 1947, which reads as follows:

84-7011. The tax imposed by this act shall be first imposed for the whole calendar year 1973, and shall be based on the statement of yield prescribed in section 84-7005.

Section 12. There is a new section to be numbered 84-7012, R.C.M. 1947, which reads as follows:

84-7012. Procedure in case of failure to file statement. If any person shall fail, refuse or neglect to make and file a statement and return within the time prescribed, the department shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the tax is to paid, and shall make and file a statement showing the amount of such gross value of product and shall ascertain and determine and compute and assess the amount of the tax due from, and to be paid by such person.

Section 13. The information furnished by the producer to the department of revenue for the purpose of this act shall be treated as provided in section 84-1507, R.C.M. 1947.

Approved: March 29, 1973.

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CHAPTER NO. 498

An Act Amending Section 87-106, R.C.M. 1947, to Exempt From Disqualification an Individual Who Leaves His Employment Because of Illness; and Providing Amendments to Conform With Reorganization As Required In Title 82A, Chapter 10, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 87-106, R.C.M. 1947, is amended to read as follows:

"87-106. **Disqualification for benefits.** An individual shall be disqualified for benefits—

(a) If he has left work without good cause attributable to the employment for a period of not less than two (2) nor more than five (5) weeks (in addition to and immediately following the waiting period), as determined by the *division* according to the circumstances in each case; *but, he shall not be disqualified if the division finds that:*

(1) He left his employment because of personal illness or injury not associated with misconduct, or left his employment upon the advice of a licensed and practicing physician, and after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the division, provided he is otherwise eligible.

(b) If he has been discharged:

(1) For misconduct connected with his work, or affecting his employment, for a period of not less than two (2) nor more than nine (9) weeks (in addition to and immediately following the waiting period), as determined by the *division* in each case according to the seriousness of the misconduct.

(2) For gross misconduct connected with his work or committed on the employer's premises, as determined by the *division,* for a period of twelve (12) months.

(c) If he failed, without good cause, either to apply for available and suitable work when so directed by the employment office or the *division* or to accept suitable work offered to him which he is physically able and mentally qualified to perform, or to return to his customary self-employment (if any) when so directed by the *division.* Such disqualification shall continue for the week in which such failure occurred and for not less than two (2) nor more than five (5) weeks in addition to the waiting

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week which immediately follow such week as determined by the *division* according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the *division* shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) If position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the *division* finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the *division* that—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the *division,* upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state

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wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) Wages in lieu of notice or separation or termination allowance;

(2) Compensation for disability under the Workmen's Compensation Law or the Occupational Disease Law of this or any other state or under a similar law of the United States, provided, however, that when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this title, if he shall be otherwise qualified. Provided further, that compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this title, provided the recipient has returned to the labor market and is otherwise qualified;

(3) Benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States, if such benefits are paid pursuant to section 87-129.

Receipt of any wages, compensation or benefits as set forth in subsection (1), (2), or (3) above, after payment of unemployment benefits, and with respect to the same week for which unemployment benefits were received, will thereupon require such individual to repay such unemployment benefits and the *division* may collect such unemployment benefits in the same manner as provided for collection of benefits under section 87-145 (d).

(f) During the school year (within the autumn, winter and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution. Notwithstanding any other provisions in this subsection, no otherwise eligible individuals shall be denied benefits for any week because he is in training approved by the *division,* nor shall such individual be denied benefits with respect to any week in which he is in training approved by the *division* by reason of the appli-

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cation of provisions in subsection (c) of this section or the application of provisions in section 87-105 (c).

(g) Where retired and entitled to receive retirement compensation in excess of one hundred dollars ($100.00) per calendar month paid in whole or in part from funds furnished by an employing unit, such disqualification to be applied as follows: All wages earned by such individual in the employment from which he has been retired shall not be considered or included in determining his wage credits or weekly benefit amount under sections 87-103 and 87-105. This disqualification does not extend to the receipt of benefits under the Federal Social Security Act, as amended.

(h) For any week wherein claimant leaves her most recent employment during pregnancy, and due to such pregnancy, and such disqualifications shall continue through the period of pregnancy unless claimant presents evidence of her physical ability to work at such employment. At any time after the seventh month of pregnancy a claimant, to establish eligibility, must present evidence of physical ability to work at such employment. Further, at any time during the first two (2) months following childbirth, a claimant, to establish eligibility, must present evidence of her physical ability to work at such employment. In any of the cases set forth hereinbefore, such evidence of eligibility must be in the form of certificate of a duly licensed physician that such claimant is physically able to work at her most recent employment, and such evidence must be presented as often as requested by the *division.*"

Approved: March 29, 1973.

CHAPTER NO. 499

An Act to Amend Section 16-2618, R.C.M. 1947, to Require County Commissioners and City and Town Councils to Seek Out Best Terms For Deposits of Money and Deleting Requirement For Ratable Distribution.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-2618, R.C.M. 1947, is amended to read as follows:

"16-2618. **Deposit of public funds by county, city and town treasurers.** (1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent bank or banks located in the

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county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall take from such bank such security as the board of county commissioners, in the case of a county, or the council in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank authorized herein above in a savings or time deposit; *provided that the bank or banks in which the money is deposited shall pay on the moneys the same rate of interest as is paid on money from private sources on the same terms. Refusal of any bank to pay said interest rate shall constitute a waiver of that bank's right to participate in the ratable distribution of said moneys as set forth in subsection (4) of this act,* and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

(2) Said board of county commissioners, city or town council may require security for only such portion of deposits as is not guaranteed or insured according to law. Such security shall consist of cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States government and its dependents, bonds guaranteed by the United States government or its dependents, bonds and warrants of the state of Montana, bonds and warrants of any county of the state of Montana, and bonds of any city, town or school district of the state of Montana, which are a general obligation of such county, city, town or school district, bonds of the Federal Land Banks, Federal Intermediate Credit Bank debentures, Federal Home Loan Bank notes and bonds, Bank for Co-operatives' debentures, Federal National Mortgage Association notes, bonds and guaranteed certificates of participation, obligations of or fully guaranteed by the Government National Mortgage Association, Farmers' Home Administration insured notes, notes fully guaranteed as to principal and interest by the Small Business Administration, Federal Housing Administration debentures, general obligation bonds of other states and counties of other states and bonds issued in the United States of America, which are quoted on the New York market which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

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(3) When negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the state examiner. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the board of county commissioners in the case of county funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter annually thereafter.

(4) When more than one bank is available in any county, for the deposit of county funds, or in any city or town for the deposit of city or town funds, such deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to the paid-in capital and surplus of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such deposits shall be maintained.

(5) Whenever it shall come to the attention of the state examiner that the funds of any county, city or town are not properly distributed as provided in this act, the state examiner shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the state examiner to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank exists in the county, city or town, or if any bank or banks existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys as have not been accepted by any bank or banks within said county, city or town, shall be deposited under the terms of this act, in the bank or banks most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any bank or banks receiving such deposits, shall, through its president and cashier, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank during the quarter, the amount of daily balance in dollars, and the amount of interest by such bank or banks credited or paid therefor, and showing that neither such bank nor any officer thereof,

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nor any person for it, has paid or given any consideration or emolument. whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to *time,* and no deposit of funds shall be made, or permitted to remain in any bank, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer.

(6) Except as provided in subsection (8) of this section, all interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

(7) Any bank pledging securities as provided in this act at any time it deems advisable or desirable may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city or town at its next official meeting. Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the county, city or town and to the depository bank, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank.

(8) Whenever in the judgment of the trustees of any common school district, high school district, or county high school it would be advantageous to invest any money of such school or school district in savings or time deposits in a state or national bank insured by the F.D.I.C., or in direct obligations of the United States government, payable within one hundred eighty (180) days from the time of investment, such governing body may in its discretion direct the county treasurer to make such investments. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, provided that nothing in this act shall be interpreted to conflict with section 16-2050."

Approved: April 2, 1973.

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CHAPTER NO. 500

An Act Requiring Local Governing Bodies to Adopt Subdivision Regulations and in Default Thereof Providing for the Promulgation of Departmental Minimum Requirements; Providing for the Submission of Environmental Assessments; Providing for the Administrative Establishment of Procedures and Requirements for Preparation of Subdivision Plats; Setting Forth Requirements for Surveying and Platting Divisions of Real Property and for Recording Surveys and Plats; Providing for Surveying, Platting, and Subdividing Generally; and Repealing Sections 11-601 through 11-616, 11-3843 through 11-3848 and 11-3851, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act may be cited as the "Montana Subdivision and Platting Act."

Section 2. It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to encourage development in harmony with the natural environment; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey.

Section 3. As used in this act, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(3) "Examining land surveyor" means a county surveyor or a registered land surveyor duly appointed to review surveys and plats submitted for filing.

(4) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

(5) "Planned unit development" means a land development

project consisting of residential clusters, industrial parks, shopping centers, or office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership.

(6) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications.

(7) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body; and the same shall be accompanied by any proposed covenants to run with the platted land and other elements of the proposed subdivision required to furnish a basis of review by the governing body.

(8) "Final plat" means the final drawing of the subdivision and dedication prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this act and in regulations adopted pursuant thereto.

(9) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice surveying in the state of Montana.

(10) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Act (sections 66-2301 through 66-2347) to practice engineering in the state of Montana.

(11) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(12) "Subdivision" means the division of land, or land so divided, into two (2) or more parcels, whether contiguous or not, any of which is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof, in order that the title or possession of the parcels or any interest therein may be sold, rented, leased, or otherwise conveyed either immediately or in the future, and shall include any resubdivision of land; and shall further include any condominium or areas providing multiple space for camping trailers, house trailers or mobile homes; provided further that a division of land is a subdivision when the division creates a second or any subsequent parcel for the purpose of sale, rent, lease, or other conveyance from a tract of land held in single or undivided ownership on July 1, 1973, where any of the parcels segregated from the original

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tract is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof. The plat of a subdivision so created shall show all of the parcels segregated from the original tract whether contiguous or not.

"Subdivision" shall include any condominium or areas providing multiple space for camping trailers, house trailers, or mobile homes, regardless of the size of the parcel of land upon which the same is situated.

Section 4. (1) Except as provided herein, all division of real property made after June 30, 1973, into lots, tracts, or parcels any of which is ten (10) acres or less in size or the boundaries or area of which cannot be determined without a survey or trigonometric calculation, must be surveyed by or under the supervision of a registered surveyor; and a certificate of survey thereof must be completed by the surveyor and filed by him in the office of the county clerk and recorder of the county in which the real property lies.

(2) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this act by or under the supervision of a registered land surveyor. Subdivision plats shall be prepared and filed in accordance with this act and regulations adopted pursuant thereto. Each subdivision plat must be accompanied by as complete a survey of the section or sections in which the subdivision is located as may be necessary to properly orient the subdivision within such section or sections. All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with the Corner Recordation Act of Montana (sections 67-2001 through 67-2019). Engineering plans, specifications, and reports required in connection with public inmprovements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this act and regulations adopted pursuant thereto.

(3) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2413, and are exempted from the surveying and platting requirements of this act; provided, however, that if such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

(4) Unless the method of disposition is adopted for the pur-

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pose of evading this act, the requirements of this act shall not apply to any division of land;

(a) which is created by order of any court of record in this state or by operation of law, or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (sections 93-9901 through 93-9926);

(b) which is created by a lien, mortgage, or trust indenture;

(c) which creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(d) which creates cemetery lots;

(e) which is made for the purpose of a gift or sale to any member of the landowner's immediate family;

(f) which is leased or rented for farming and agricultural purposes.

(5) The department of intergovernmental relations shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(6) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

Section 5. (1) The governing body of every county, city, and town shall, before July 1, 1974, adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation; and the avoidance of danger or injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

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Prior to adopting or amending subdivision regulations pursuant to this act, the governing body shall submit the proposed regulations or amendments to the division of planning and economic development of the department of intergovernmental relations for review.

Before the governing body adopts subdivision regulations pursuant to this section it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in each newspaper published in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

(2) Not later than December 31, 1973, the department of intergovernmental relations, through its division of planning and economic development, shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe model subdivision rules and reasonable minimum requirements designed to promote the public health, safety and general welfare to be contained in, and those subject areas which must be addressed by, subdivision regulations adopted pursuant to this act. The subdivision rules and minimum requirements shall include detailed criteria for the content of the environmental assessment required by this act. The governing body shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in proposed subdivision; provided, however, that such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body.

(3) In prescribing the minimum contents of the subdivision regulations, the department of intergovernmental relations, through its division of planning and economic development, shall require the submission by the subdivider to the governing body of an environmenetal assessment.

(4) The environmental assessment shall accompany the preliminary plat and shall include:

(a) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation and wildlife use within the area of the proposed subdivision;

(b) maps and tables showing soil types in the several parts

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of the proposed subdivision, and their suitability for any proposed developments in those several parts;

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewage, and solid waste facilities, and fire and police protection;

(d) such additional relevant and reasonable information as may be required by the department through its division of planning and economic development.

(5) Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five (5) or fewer parcels all of which front on an existing public road where no land in the subdivision will be dedicated to public use and which have been approved by the department of health and environmental sciences where such approval is required by sections 69-5001 through 69-5005; provided that reasonable local regulations may contain additional requirements for summary approval.

(6) Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this subsection must be based on specific variance criteria contained in the subdivision regulations.

(7) Local regulations may provide that in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.

(8) In the event that any governing body has not adopted subdivision regulations by July 1, 1974, which meet or exceed the prescribed minimum requirements, the department shall, through its division of planning and economic development, no later than January 1, 1975, promulgate reasonable regulations to be enforced by the governing body. If at any time thereafter the governing body adopts its own subdivision regulations, these shall supersede those promulgated by the department but shall be no less stringent.

Section 6. (1) A subdivision plat in which any lot is five (5) acres or less in size shall show that one-ninth (1/9) of the

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platted area, exclusive of all other dedications, is forever dedicated to the public for parks and playgrounds.

A subdivision plat in which all lots shown are greater than five (5) acres in size shall show that one-twelfth (1/12) of the platted area, exclusive of all other dedications, is forever dedicated to the public for parks and playgrounds. There shall be no requirement for dedication of parks and playgrounds when the subdivision plat show that all lots or parcels are greater than ten (10) acres in size. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where, because of size, topography, shape, location, or other circumstances, the dedication of land for parks and playgrounds is undesirable, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

(4) If a tract of land is being developed under single ownership as a part of an overall plan, and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of this section for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(5) The local governing body may waive dedication and cash donation requirements where all of the parcels in a subdivision are five (5) acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by consent of the governing body that the parcels in the subdivision will never be subdivided into parcels of less than five (5) acres and that all parcels in the subdivision will be used for single family dwellings.

Section 7. Where a subdivision platted under this act contains land to be dedicated to public use, the subdivider shall submit with the preliminary plat either:

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(1) a certificate of a licensed title abstractor showing the names of the owners of record of the land to be dedicated and the names of lien holders or claimants of record against the land and the written consent to the dedication by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land; or

(2) title insurance guaranteeing the public's interest in the dedicated land in a reasonable amount to be determined by the governing body.

Section 8. (1) Except where a plat is eligible for summary approval the subdivider shall present to the governing body, or the agent or agency designated thereby, the preliminary plat of the proposed subdivision for local review. When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body. When the proposed subdivision is situated entirely in an unincorporated area the preliminary plat shall be submitted to and approved by the governing body of the county; however, if the proposed subdivision lies within one (1) mile of a third class city or town or within two (2) miles of a second class city or within three (3) miles of a first class city the county governing body shall submit the preliminary plat to the city or town governing body for review and comment. If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies. This section does not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to section 11-3305.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within sixty (60) days of its presentation. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to sections 11-3801 through 11-3856 to the provisions of this act, and to rules and regulations prescribed or adopted pursuant to this act.

(3) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body. Notice of such hearing shall be given by publication in a newspaper published in the county

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not less than fifteen (15) days prior to the date of the hearing. When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than ten (10) days after the public hearing. If the governing body rejects or conditionally approves the preliminary plat, it shall forward one (1) copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

(4) Upon approving or conditionally approving a preliminary plat, the governing body shall affix a dated and signed statement of approval to the preliminary plat. The governing body shall forward one (1) copy of the approval statement to the subdivider. This approval shall be in force for not more than one (1) calendar year; at the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than one (1) calendar year.

Section 9. (1) All final subdivision plats shall be reviewed for errors and omissions in calculation or drafting by an examining land surveyor. He shall ascertain that all features, such as streets, drainage, and all other improvements and facilities to be operated or maintained with public funds, are essentially the same as those shown on the approved preliminary plat; that the permanent control monuments meet requirements prescribed pursuant to this act; that all exterior boundaries and corners of the tract are shown in sufficient detail so as to leave no doubt as to how they were established; and that all monuments and references marking exterior corners conform to standards of size and position promulgated pursuant to this act. When the survey data shown on the plat meet the conditions set forth by or pursuant to this act, the examining land surveyor shall so certify in a printed or stamped certificate on the plat; such certificate shall be signed by him.

No land surveyor shall act as an examining land surveyor in regard to a plat in which he has a financial or personal interest other than as draftsman of the plat.

(2) The governing body shall examine every final subdivision plat and shall approve it when, and only when, it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this act and regulations adopted pursuant thereto. The clerk and recorder of the county shall refuse to

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accept any plat for record that fails to have such approval in proper form.

(3) Every final subdivision plat must be filed for record with the county clerk and recorder before any interest in the subdivided land can be sold, rented, leased, or transferred in any manner or offered for sale, lease, or transfer. If illegal tranfers or offers of any manner are made, the county attorney shall commence action to enjoin further sales, transfers, or offers of sale or transfer and compel compliance with all provisions of this act. The cost of such action shall be imposed against the person transferring or offering to transfer the property.

Section 10. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision plats.

Section 11. All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

Section 12. (1) Any plat prepared and recorded as herein provided may be vacated either in whole or in part as provided by sections 11-2801 and 11-2803, and upon such vacation the title to the streets and alleys of such vacated portions to the center thereof shall revert to the owners of the properties within the platted area adjacent to such vacated portions; provided however, that when any pole line, pipe line, or any other public or private facility that is located in a vacated street or alley at the time of the reversion of the title thereto, the owner of said public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public utility facility.

(2) All plats and other title records which were recorded prior to the effective date of this act in accordance with the law in force at the time of recording and which have not been subsequently vacated are hereby validated, notwithstanding irregularities, and have the same legal status as plats recorded under the provisions of this act.

(3) The recording of any plat made in compliance with the provisions of this act shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof, shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

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Section 13. Every donation or grant to the public, or to any person, society, or corporation, marked or noted on a plat is to be considered a grant to the donee.

Section 14. (1) Within one hundred eighty (180) days of the completion of a survey the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and file for record a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in such map;

(c) discloses evidence to suggest alternate locations of lines or points;

(d) establishes one or more lines not shown on a recorded map the positions of which are not ascertainable from an inspection of such map without trigonometric calculations.

(2) A certificate of survey will not be required for any survey which is made by the United States bureau of land management or which is preliminary or which will become part of a subdivision plat being prepared for recording under the provisions of this act.

(3) Certificates of survey shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and shall conform to monumentation and surveying requirements promulgated under this act.

Section 15. The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey. This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

Section 16. When a recorded plat does not definitely show the location or size of lots or blocks, or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat

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referring to the original plat and noting the defect existing therein and the corrections made.

Section 17. Every registered land surveyor may administer and certify oaths:

(1) when it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(2) when a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(3) when the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

A record of oaths shall be preserved as part of the field notes of the survey, and noted on the certificate of survey filed under this section.

Section 18. Any person who violates any provision of this act or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars ($100) or more than five hundred dollars ($500) or by imprisonment in a county jail for not more than three (3) months, or by both fine and imprisonment. Each sale, lease or transfer, or offer for sale, lease, or transfer of each separate parcel of land in violation of any provision of this act or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

Section 19. If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 20. Sections 11-601 through 11-616, 11-3843 through 11-3848, and 11-3851, R.C.M. 1947, are repealed.

Approved: April 2, 1973.

CHAPTER NO. 501

An Act Providing for the Issuance of Bonds By Airport Authorities; Amending Sections 1-804, 1-912 and 1-916, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

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Section 1. Section 1-912, R.C.M. 1947, is amended to read as follows:

"1-912. **Bonds and other obligations.** *(1)* An authority shall have the power to borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including *revenues derived from:*

(a) an airport or air navigation facility or facilities,

(b) taxes levied pursuant to section 1-916, or other law, for airport purposes,

(c) grants or contributions from the federal government or

(d) other sources.

The bonds may be *issued by resolution or resolutions of the authority, without an election, and without any limitation of amount except as follows: No such bonds shall be issued at any time if the total amount of principal and interest to become due in any year on such bonds, and on any then outstanding bonds for which revenues from the same source or sources are pledged, exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds; and the authority shall be obligated to take all action necessary and possible to impose, maintain and collect rates, charges, rentals and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year. They may be* sold at public or private sale *and* shall bear interest at a rate or rates not exceeding ten per centum (10%) per annum. *Except as otherwise provided herein, any* bonds issued pursuant to this chapter by an authority shall be payable as to principal and interest solely from revenues of *the authority,* and shall state on their face *the* applicable *limitations* or *restrictions regarding the source or sources from which such principal and interest are payable.*

Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued *for an essential public and governmental purpose by a political subdivision within the meaning of section 84-4905(2)(a).*

For the security of any such bonds, the authority or municipality may by resolution make and enter *into* any covenant, agreement, or indenture *and exercise any additional powers* authorized to be made, *entered into or exercised by a municipality under title 11, chapter 24.* The sums required from time to time to pay principal and interest and to create and maintain a reserve for the

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bonds may be made payable from any and all revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(2) Subject to the conditions stated in this paragraph (2) the governing body of any municipality having a population in excess of ten thousand (10,000) may, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, by resolution covenant that, in the event that at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, *it will* levy a general tax upon all of the taxable property in the municipality for the payment of such deficiency and *may further covenant that* at any time a deficiency is likely to occur within one (1) year for the payment of principal and interest due on such bonds, *it will* levy a general tax upon all the taxable property in the municipality for the payment of such deficiency, and such taxes shall not be subject to any limitation of rate or amount applicable to other municipal taxes *but shall be limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one municipality having a population in excess of ten thousand (10,000) is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of or in anticipation of a deficiency in the revenues appropriated for such bonds in such manner as the municipalities shall determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution shall become effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for said purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed, to the extent applicable, by section 11-2308 and 11-2310 for an election called by cities and towns and section 16-202 and 16-2026 for an election called by counties. If a majority of the electors voting thereon vote against approval of the resolution, the municipality shall have no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such municipality or authority may nevertheless issue bonds under this chapter payable solely from the sources referred to in paragraph (1) above."*

Section 2. Section 1-916, R.C.M. 1947, is amended to read as follows:

"1-916. **Tax levy may be certified by airport authority or municipality.** The airport authority may certify annually to the

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governing bodies, the amount of tax to be levied by each municipality participating in the creation of the airport authority, and the municipality *shall* levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes. The levy made shall not exceed the maximum levy permitted by the laws of this state for airport purposes *or any such lower limit as may have been established by the municipality or municipalities in the resolution creating the authority.* The municipality shall collect the taxes certified by an airport authority in the same manner as other taxes are levied and collected and make payment to the airport authority. The proceeds of such taxes when and as paid to the airport authority shall be deposited in a special account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided for in this chapter. Prior to the issuance of bonds under section 1-912 the airport authority or the municipality may by resolution covenant and agree that the total amount of such taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be certified, levied and deposited annually as herein provided, until the bonds and interest thereon are fully paid."

Section 3. Section 1-804, R.C.M. 1947, is amended to read as follows:

"1-804. **Tax levy for establishment and operation of airports.** For the purpose of establishing, constructing, equipping, maintaining and operating airports and landing fields under the provisions of this act the county commissioners or the city or town council may each year assess and levy in addition to the annual levy for general administrative purposes *or the all-purpose levy authorized by sections 84-4701.1 and 84-4701.2,* a tax of not to exceed two (2) mills on the dollar of taxable value of the property of said county, city or town. In the event of a jointly established airport or landing field, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining in the venture shall pay, *provided that no property within any political subdivision shall be subject to a tax pursuant to this section at an annual rate in excess of two (2) mills.* Provided, that if it be found that the levy hereby authorized will be insufficient for the purposes herein enumerated, the commissioners and councils acting are hereby authorized and empowered to contract an indebtedness on behalf of such county, city or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no money may be borrowed and no bonds may be issued for such purpose until the proposition has been

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submitted to the qualified electors, and a majority vote to be cast therefor, except that for the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways and ramps, said governing bodies may set up annual reserve funds in their annual budget, provided said reserve is approved by the governing bodies during the normal budgeting procedure. Provided further that the necessity to resurface or improve said runways by overlays or similar methods every so many years is based upon competent engineering estimates, and provided that said funds are expended at least within each ten (10) year period. Said fund shall not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways and ramps, of any one airport for each said fund. The governing body of said airport, if in its judgment deems it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the F.D.I.C. or obligations of the United States of America, either short-term or long-term. Interest earned from such investments shall be credited to the operations and maintenance budget of said airport governing body. The above provisions, notwithstanding other budget control measures, and due to the uniqueness of the subject matter, are hereby declared necessary in the interests of the public health and safety."

Approved: April 2, 1973.

CHAPTER NO. 502

An Act Providing for the Identification, Acquisition, Restoration, Enhancement, Preservation and Administration of Historic, Paleontological, Archaeological, and Cultural Sites and Objects, and Providing For Their Use and Enjoyment by the People; Providing for a Permit System For Excavation of Sites; Providing Penalties For Violation of this Act; Providing That If Other Laws Conflict With This Act That This Act Shall Control; and Providing An Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act shall be known as the "State Antiquities Act."

Section 2. The purpose of this act is to provide a method of identification, acquisition, restoration, enhancement, preservation, conservation and administration of the historic, archaeological, paleontological, scientific, and cultural sites and objects of the state of Montana, and for their use and enjoyment by the people, and for the people's health and welfare.

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Section 3. As used in this act:

(1) "Department" means the state fish and game department of the state of Montana.

(2) "Society" means the Montana historical society.

(3) "Board" means the state board of land commissioners.

(4) "Historical" means after the advent of white man into Montana.

(5) "Prehistorical" means before the advent of white man into Montana.

(6) "Paleontological" means noncultural prehistorical material of a geological nature such as fossilized plants and animals.

(7) "Site" means any historic, prehistoric, archaeologic, paleontologic, scientific, or cultural site upon lands subject to this act.

(8) "Object" means any historic, prehistoric, archaeologic, paleontologic, scientific or cultural object or cluster of objects or materials, buildings, structures, or combinations thereof.

(9) "Registered site" means any site registered by the department as provided in this act or covered by cooperative agreement under Section 8 of this act.

(10) "Registered objects" mean any object registered by the department as provided in this act or covered by cooperative agreement under section 8 of this act.

(11) "Person" means any individual, partnership, association, society, institute, corporation or the agents thereof; the singular includes the plural.

Section 4. The board is authorized on the recommendation of the department and society to designate for registration by the department sites and objects situated on land under the control of the state of Montana. The board may withdraw or reserve, at any time, sufficient state land administered by the board as may be necessary for the proper care and management of such sites and objects. No state land may be sold nor any development shall be allowed which will disturb the registered site or registered object unless it is protected or excavated in accordance with this act. The use of state land for the care and management of such sites and objects is hereby declared by the legislature to be a worthy object of the trust as specified in section 81-103. The board is authorized to take adequate steps to protect such sites and objects.

Section 5. No person may excavate, remove or restore any registered site or registered object without first obtaining a permit

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from the department. Said permits are to be granted only after careful consideration of the application for a permit, and be subject to the strict compliance with the following guidelines:

(a) Permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific or educational institutions, societies or persons with a view toward dissemination of knowledge about cultural properties, provided no such permit shall be granted unless the department is satisfied that the applicant or applicants possess the necessary qualifications to guarantee the proper excavation of those sites and objects which may add substantially to man's knowledge about Montana and its antiquities.

(b) The permit must specify that a summary report of such investigations, containing relevant maps, documents, drawings and photographs be submitted to the department which shall in turn submit the report to an appropriate repository. The department shall determine the appropriate time period allowable between all work undertaken, and submission of the summary report.

(c) Permits will be preferentially granted to resident persons unless in the event that a state person is unavailable, unqualified, or uninterested in the work proposed for investigation. In the event that a permit is granted to a nonstate person, there must be provision that removed objects may not leave or must revert to the state of Montana, provided that all specimens so collected shall be and remain the property of the state of Montana, and provided further that the department and the society may give permission for the loan of such materials for scientific or educational purposes.

Section 6. The department and the society shall supervise the distribution of all collections made under the provisions of this act and shall distribute material from such collections on loan only.

Section 7. The department is authorized and directed to compile and keep a register of all registered sites and registered objects. This register shall be known as the state historical register.

Section 8. The department is authorized to enter into cooperative agreements with private landowners or the owners of objects to preserve, mark, maintain, excavate, or otherwise deal with such sites and objects upon such terms as may be agreed upon by the department and such private owners. The cooperative agreements may contain a clause that the sites and objects shall be registered under this act, and also a provision that the state of Montana shall hold the owner harmless for any liability that may occur while the property is under the control of the state of Montana.

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Section 9. The department is authorized and directed to cooperate with all federal, state and local government agencies, in the identification, acquisition, restoration, enhancement, preservation and administration of all such sites and objects for the use and enjoyment of the people, and for the purpose of exhibition and interpretation of the history and culture of the state of Montana.

Section 10. The department is authorized and directed to apply to any district court of the state of Montana for a writ of injunction to prevent the waste, removal and destruction of any such registered site or registered object. The department shall not be required to give any bond in such application. Upon hearing of the petition for injunction, the court may restrain waste, removal or destruction upon said site, or of such object for a period of one (1) year. The court may also provide in its order that during such period the department shall present to the parties involved a program for the protection, preservation, restoration and maintenance of the registered site or registered objects.

Section 11. Any person who shall willfully injure, remove or damage any registered site or object thereon without obtaining a permit or shall violate any of the regulations made by the department relating to state parks, historical, paleontological or prehistorical sites, buildings, structures, monuments or objects, shall be guilty of a misdemeanor and shall upon conviction be fined not more than one thousand dollars ($1,000), or be imprisoned in the county jail for not more than six (6) months, or both such fine and imprisonment.

Section 12. Any person conducting any activities, including survey, excavation or construction who discovers on any lands owned, leased or controlled by this state or any agency thereof, any object or objects as defined in this act, shall promptly report to the department the existence of any such site or object discovered in the course of such survey, excavation or construction, and shall take all reasonable steps to secure its preservation.

Section 13. The governor may appoint an advisory council from properly qualified persons in the fields of anthropology, archaeology, paleontology, and history and other related disciplines to advise and consult with the department and the board relating to all matters of Montana's antiquities.

Section 14. In so far as any of the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

Section 15. This act is effective on its passage and approval.

Approved: April 2, 1973.

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CHAPTER NO. 503

An Act to Amend Section 16-1015, R.C.M. 1947, to Increase the Maximum Allowable County General Fund Mill Levy.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-1015, R.C.M. 1947, is amended to read as follows:

"16-1015. **Taxation.** The board of county commissioners has jurisdiction and power under such limitations and reservations as are prescribed by law to levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding *twenty-seven (27)* mills, on each dollar of the taxable valuation for any one (1) year for counties of the fourth, fifth, sixth and seventh classes, and *twenty-five (25)* mills on each dollar of the taxable valuation for any one (1) year for counties of the first, second and third classes and to levy such taxes as are required to be levied by special or local statutes. *Provided, however, that after July 1, 1974, the mill levy shall not exceed twenty-four (24) mills in any county of the fourth, fifth, sixth and seventh classes or twenty-two (22) mills in any county of the first, second and third classes until the sales-ratio studies conducted by the department of revenue demonstrate that the average assessed value of single family dwellings equals or exceeds thirty-six percent (36%) of full cash value.*"

Approved: April 2, 1973.

CHAPTER NO. 504

An Act Providing For An Increase In Silicosis Benefits' Payments As Administered by the Division of Workmen's Compensation; Amending Sections 71-1003, 71-1004 and 71-1008, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 71-1003, R.C.M. 1947, is amended to read as follows:

"71-1003. **Eligibility requirements for aid to persons having silicosis, as herein defined.** Payment shall be made under this act to any person who:

(a) Has silicosis, as defined in section 71-1001, which results in his total disability so as to render it impossible for him to follow continuously any substantially gainful occupation. The term "gain-

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ful occupation" as used herein shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential, but shall mean any person having an income from any other source exceeding one hundred fifty dollars ($150.00) per month.

(b) Has resided in and been an inhabitant of the state of Montana for ten (10) years, or more, immediately preceding the date of the application.

(c) If any person who is entitled to benefits under this act shall be an inmate in any Montana state institution, benefits shall not be paid to him, but shall be paid his beneficiary, if any, as defined in section 92-413.

(d) Is not receiving, with respect to any month for which he would receive a payment under this act, compensation under the Workmen's Compensation Act of the state of Montana, as provided by chapter 155, Laws of 1959, which will equal the sum of *one hundred seventy-five dollars ($175)* hereunder. If he is receiving payments under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, which is less in the aggregate than *one hundred seventy-five dollars ($175)*, then he is entitled to a payment under this act of the difference between the amount received under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, and *one hundred seventy-five dollars ($175)* per month."

Section 2. Section 71-1004, R.C.M. 1947, is amended to read as follows:

"71-1004. **Amounts of payments.** Subject to the provisions of this act and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the *division of workmen's compensation;* been determined by the *division of workmen's compensation* to be entitled payment under this chapter for silicosis, shall be granted a payment by the *division of workmen's compensation* of *one hundred seventy-five dollars ($175)* per month subject to such appropriations as may from time to time be made. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein."

Section 3. Section 71-1008, R.C.M. 1947, is amended to read as follows:

"71-1008. **Conformity with acts of federal government.** If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the *division of workmen's compensation* of the

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state of Montana is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this act. The total payments to any individual under this act shall not exceed *one hundred seventy-five dollars ($175)* per month exclusive of any grants made by Congress."

Approved: April 2, 1973.

CHAPTER NO. 505

An Act Amending Section 10-622, R.C.M. 1947, Providing an Increase in the Maximum Salary for Juvenile Probation Officers from Ten Thousand Two Hundred Dollars ($10,200) to Eleven Thousand Dollars ($11,000).

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 10-622, R.C.M. 1947, is amended to read as follows:

"10-622. **Probation officers — appointments — removal — salaries.** In every judicial district of the state of Montana the judge thereof having jurisdiction of juvenile matters may appoint one (1) discreet person of good moral character, who shall be known as the chief probation officer of such district and who shall hold his office until removed by the court. Preference in appointment shall be given to any person who possesses the following qualifications:

(1) a bachelor's degree from an accredited college or university in the behavioral sciences, or

(2) a bachelor's degree from an accredited college or university in some subject other than the behavioral sciences, and three (3) years of experience in work of a nature related to the duties of the probation department as set forth in section 10-623.

Such officer shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district court may employ him on a yearly salary not to exceed *eleven thousand dollars ($11,000),* or on a per diem basis at the rate of forty dollars ($40) per day for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the assessed valuation of such counties for the year then current, except that where such official is appointed for one (1) county, his salary shall be paid by that county.

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The judge having jurisdiction of juvenile matters may also appoint such additional persons giving preference to persons having the qualifications suggested for appointment as the chief probation officer to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety per cent (90%) of the salary of the chief probation officer.

For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of children, the probation officer shall, in addition to his official salary, be reimbursed for actual expenses incurred."

Approved: April 2, 1973.

CHAPTER NO. 506

An Act to Grant Additional Powers to the Department of Health and Environmental Sciences Relating to Acquisition of Information and Enforcement of Remedies for the Purpose of Complying with the 1972 Amendments to the Federal Water Pollution Control Act; and Amending Sections 69-4802, 69-4808.2, 69-4809.1 and 69-4823, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 69-4802, R.C.M. 1947, is amended to read as follows:

"69-4802. **Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present;

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, tar, chemicals, dead animals, sediment, and all other substances that may pollute state waters;

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes or other wastes creating a hazard to human health;

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(5) "Pollution" means such contamination, or other alteration of the physical, chemical or biological properties, of any state waters, as exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any state water as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, or to livestock, wild animals, birds, fish or other wildlife, provided, however, that any discharge which is permitted by Montana water quality standards is not "pollution" for the purposes of this chapter.

(6) "Sewerage system" means any device for collecting or conducting sewage, industrial wastes or other wastes to an ultimate disposal point;

(7) "Treatment works" means any works installed for treating or holding sewage, industrial wastes or other wastes;

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewerage systems and treatment work;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; this section shall not apply to irrigation waters where the waters are used up within the irrigation system and said waters are not returned to any other state waters;

(10) "Person" means the state, any political subdivision of the state, institution, firm, corporation, partnership, or individual or other entity;

(11) "Council" means the state water pollution advisory council created by this act;

(12) "Board" means the state board of health;

(13) "Department" means the state department of health;

(14) "Executive officer" means the chief administrative officer of the state department of health;

(15) "Director" means the director of water pollution control, a position created by this act;

(16) "Local department of health" means the staff, including any health officers, employed by a county, city, city-county, or district board of health.

(17) "Point Source" means any discernible, confined and dis-

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crete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(18) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source;

(19) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(20) "Effluent standard" means any restriction or prohibition on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into state waters."

Section 2. Section 69-4808.2, R.C.M. 1947, is amended to read as follows:

"69-4808.2. **Duties of board of health.** (1) The board shall:

(a) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(b) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;

(c) review from time to time, at intervals of not more than three years, established classifications of waters and standards of water purity and classification, provided that

(1) such classifications, standards, and rules as have been adopted by the state water pollution control council under section 133, chapter 197 of the Laws of 1967 [69-4813] shall be deemed, without necessity of a hearing, to have been initially adopted by the board.

(2) in revising classifications or standards or in adopting new classifications or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted by the state water pollution control council under section 133, chapter 197 of the Laws of 1967 [69-4813].

(3) the board shall require that any state waters whose existing quality is better than the established standards as of the date on which such standards become effective be maintained at that

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high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of such waters, and

(4) the board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increase source of pollution to high quality waters, referred to in (3) immediately above, to provide the degree of waste treatment necessary to maintain that existing high water quality;

(d) advise, consult, and co-operate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution;

(e) make rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(f) make rules governing the issuance, denial, modification, or revocation of permits, provided, however, that:

(1) the rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that

(2) the rules may allow the issuance of a temporary permit under which pollution may result, for a period no longer than three years and subject to no extension, if the department finds that the issuance of such a permit is proper for obtaining compliance with the applicable standards, that

(3) the rules shall provide that the department may revoke any permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and that

(4) any person introducing a new source or increased source of sewage, industrial waste, or other wastes as defined in section 69-4802 (1), (2), and (3), R.C.M. 1947, to waters and tributaries of waters classified as A-open-D-1 or higher by the board shall be required to install and maintain the highest and best degree of treatment works necessary to maintain adequately said classification, as defined in section 69-4802 (7), R.C.M. 1947, prior to the issuance of a permit by the department;

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(g) hold any hearings necessary for the proper administration of this chapter;

(h) make rules for the administration of this chapter; and

(i) bring actions in court for the enforcement of this chapter; *and*

(j) promulgate and adopt pretreatment standards for wastewater discharged into a municipal disposal system, promulgate and adopt effluent standards as defined in section 69-4802 (20), and establish standards of performance for new point source discharges.

(2) The board may:

(a) accept loans and grants from the federal government and from other sources to carry out the provisions of this chapter; and

(b) establish minimum requirements for the treatment of wastes."

Section 3. Section 69-4809.1, R.C.M. 1947, is amended to read as follows:

"69-4809.1. **Duties of department of health.** (1) The department shall:

(a) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes to state waters, consistently with rules made by the board;

(b) examine and approve or disapprove plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(c) clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged.

(d) collect and furnish information relating to the prevention and control of water pollution; and

(e) conduct or encourage necessary research and demonstrations concerning water pollution.

(f) issue orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them."

Section 4. There is a new section to be numbered 69-4809.2, R.C.M. 1947, which reads as follows:

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69-4809.2. **Power to inspect and monitor — authority.** (1) In order to carry out the objectives of this act and to effectively monitor the discharge of sewage, industrial wastes and other wastes into state waters, the department may require the owner or operator of any point source to:

(a) establish and maintain records;

(b) make reports;

(c) install, use and maintain monitoring equipment or methods, including biological monitoring techniques;

(d) sample effluents using specified monitoring methods at designated locations and intervals;

(e) provide other information as may be reasonably required by the department.

(2) The authorized representative of the department, upon presentation of his credentials, may at reasonable times enter upon any public or private property and have access to and copy any records required under this act, inspect any monitoring equipment or method required under subsection (1) (c), and sample any effluents which the owner or operator of such source is required to sample under that subsection.

(3) Any records, reports, or information obtained under this section shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards.

Section 5. There is a new section to be numbered 69-4820.1, R.C.M. 1947, which reads as follows:

69-4820.1. **Additional enforcement remedies.** (1) In addition to all other remedies created by this act, the department is authorized to take appropriate enforcement action to:

(a) prevent, abate, and control the pollution of state waters;

(b) prevent, abate, and control any violation of a condition or limitation imposed by a permit issued under section 69-4806, R.C.M. 1947;

(c) prevent, abate, and control any violations of regulations relating to pretreatment standards.

(2) Any person violating a condition, limitation, standard or other requirement established pursuant to this section may be served with a compliance order issued by the department. Such order must specify the condition, limitation, standard or other requirement violated and must set a time for compliance. However, in

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establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard or other requirement that has been violated. The compliance order issued under this section shall be personally served by an authorized employee of the department.

(3) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for any violation which would be subject to a compliance order under subsection (2) of this section. Any action under this subsection may be commenced in the district court of any county in which the defendant is located or resides or is doing business, and the court shall have jurisdiction to restrain such violation and to require compliance.

(4) Any person found to be in violation of a condition, limitation, standard or other requirement established pursuant to this section shall be subject to the penalty provisions of section 69-4823, R.C.M. 1947.

(5) For the purpose of this subsection, the term "person" shall mean, in addition to the definition contained in section 69-4802, R.C.M. 1947, any responsible corporate officer.

Section 6. Section 69-4823, R.C.M. 1947, is amended to read as follows:

"69-4823. **Penalties for violation of provisions, rule,** *permit, effluent standard,* **or order — purpose and construction of chapter.** (1) *A* person who violates any rule, *permit, effluent standard,* or order issued pursuant to *the provisions of this act shall be* guilty of an offense and subject to a *civil penalty* not to exceed *ten* thousand dollars *($10,000)*. Each day of violation constitutes a separate offense.

(2) *A* person who willfully violates section *69-4806, R.C.M. 1947, or any pretreatment standard established pursuant to* this act is guilty of an offense and subject to a fine not to exceed *twenty-five* thousand dollars *($25,000) per day of violation or by imprisonment for not more than one year or both. Following an initial conviction under this subsection, subsequent convictions shall subject a person to a fine of not more than fifty thousand dollars ($50,000) per day of violation, or imprisonment for not more than two (2) years, or both.*

(3) Action pursuant to [sub] section (1) of this section does not bar enforcement of this chapter or of rules or orders issued pursuant to it by injunction or other appropriate remedy. The board shall institute and maintain any and all such enforcement proceedings in the name of the state.

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(4) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate and control the pollution of state waters. This chapter shall not be construed to abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor shall any provision of this chapter or any act done by virtue of it be construed as estopping the state or any municipality or person as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

(5) All fines collected shall be deposited to the *state general fund.*

(6) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this act or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this act shall upon conviction be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment for not more than six (6) months, or both.

(7) In a civil action initiated by the department under this act, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation, and any expense incurred by the state in removing, correcting or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants."

Section 7. There is a new section to be numbered 69-4824.1, R.C.M. 1947, which reads as follows:

69-4824.1. **Additional emergency powers.** Notwithstanding any other provisions of this act, the department upon receipt of evidence that a pollution source or combination of sources is endangering the health, welfare, or livelihood of a person may bring suit in the district court of any county in which the defendant is located or resides or is doing business to enjoin the discharge of pollutants causing or contributing to the alleged pollution.

Approved: April 2, 1973.

CHAPTER NO. 507

An Act to Amend Section 75-6204, R.C.M. 1947, to Increase Pay to Members of the Teachers' Retirement Board and Remove Restrictions on Maximum Per Diem Pay; Amending Sections

75-6206 and 75-6207, R.C.M. 1947, to Change Certain Methods of Funding and Disbursing from the Various Teachers' Retirement System Funds; Amending Section 75-6208, R.C.M. 1947, to Provide Additions and Changes in Various Benefits to Members of the Teachers' Retirement System; Amending Section 75-6212, R.C.M. 1947, to Allow for Service Credits for Employment while a Teacher is on Leave; Amending Section 75-6213, R.C.M. 1947, to Define Basis of Cost for Out-of-State Service Credit; Changing Credit for Out-of-State Teaching and Prior Military Service and Decreasing Membership Requirements of the Teachers' Retirement System; Adding a New Section to be Numbered 75-6219 Providing for a Tax Deferred Annuity Program Sponsored by the Teachers' Retirement System.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-6204, R.C.M. 1947, is amended to read as follows:

"75-6204. **Per diem and expenses.** The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive *twenty-five dollars ($25)* per day and his necessary and actual expenses incurred for each day in attendance at the meetings of such board or in the execution of his duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section shall be paid from the expense fund of the retirement system."

Section 2. Section 75-6206, R.C.M. 1947, is amended to read as follows:

"75-6206. **Financial administration of moneys.** The retirement board shall be the trustees of all moneys collected for the retirement system and as such trustees they shall provide for the financial administration of the moneys in the following manner:

(1) The moneys shall be invested and re-invested by the state board *of investments.*

(2) The retirement board annually shall establish the rate of regular interest.

(3) The retirement board annually shall divide among the several funds of the retirement system an amount equal to the average balance of such funds during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of subsection (3) (e) of section 75-6207, the amount to be credited to each fund shall be allocated from the interest and other earnings on the moneys of the retirement system actually

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realized during the preceding fiscal year, less the amount allocated to the expense fund under the provisions of subsection (5) (b) of section 75-6207.

(4) The state treasurer is the custodian of the collected retirement system moneys and of the securities in which said moneys are invested. All expenditures from such moneys shall be made only upon claims signed by two (2) persons designated by the retirement board. A properly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of each person shall be filed with the state controller as his authority for approving such claims.

(5) Except as herein provided no member of the retirement board nor any of its employees shall have an interest, direct or indirect, in the gains or profits of any investment of moneys of the retirement system. No member of the retirement board nor any of its employees shall directly or indirectly for himself or as an agent in any manner use the moneys or deposits of the retirement system except to make such current and necessary expenditures as are authorized by the retirement board. No member of the retirement board nor any of its employees shall become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the retirement system.

(6) The retirement board may in its discretion transfer the amount in the annuity savings account of an inactive member to the pension accumulation fund if the account has been dormant for a period of seven (7) years. No right of the member shall be jeopardized by such transfer and the amount shall be transferred back to the member's annuity savings account upon his request.

(7) All the funds established by section 75-6207, except the expense fund, shall be accounts in the agency fund of the treasury fund structure of the state. The expense fund shall be an account in the earmarked revenue fund of the same treasury fund structure."

Section 3. Section 75-6207, R.C.M. 1947, is amended to read as follows:

"75-6207. **Method of financing.** The retirement board shall establish and maintain the following funds in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

(1) **Annuity savings fund.** The annuity savings fund shall be a fund in which the contributions from the members to provide for their annuities shall be accumulated in individual accounts for

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each member. Contributions to and payments from the annuity savings fund shall be made in the following manner.

(a) Each employer shall deduct from the compensation of each active member on each and every payroll of such member for each and every payroll period subsequent to the date on which such member became a member an amount equal to *five and one-eighth percent (5 1/8%)* of such member's earnable compensation, but no employer shall make any deductions for annuity purposes from the compensation of a member who has attained the age of sixty (60) and rendered thirty-five (35) years of creditable service if such member elects not to contribute.

(b) In determining the amount earnable by an active member in a payroll period, the retirement board may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from compensation for any period less than a full payroll period if a teacher was not an active member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth (1/10) of one per cent (1%) of the annual compensation upon the basis of which said deduction is to be made.

(c) Such deductions shall be made notwithstanding that the minimum compensation provided by law for a member may be reduced thereby. Every member shall be deemed to consent and agree to the deductions prescribed by this section; and payment of salary or compensation less the deductions shall be a full and complete discharge of all claims whatsoever for the services rendered by such person during the period covered by such payment except as to the benefits provided by the retirement system.

(d) In addition to the contributions deducted from compensation and subject to the approval of the retirement board, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the accumulated contributions plus interest in the amount the contributions would have earned had the contributions not been withdrawn, or any part thereof, which he had previously withdrawn; or any member may deposit therein by a single payment or by an increased rate of contribution amounts for the purchase of an additional annuity. Such additional amounts so deposited shall become a part of his accumulated contributions. In the case of disability retirement, they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing

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his retirement allowance. The accumulated contributions of a member withdrawn by him, or paid to his estate or to his designated beneficiary in event of his death shall be paid from the annuity savings fund, and an amount equivalent to the difference between the accumulated contributions calculated at regular interest and the amount paid shall be transferred to the pension accumulation fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(2) **Annuity reserve fund.** The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(3) **Pension accumulation fund.** The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each employer shall pay into the pension accumulation fund an amount equal to *five and one-fourth percent (5 1/4%)* of the earnable compensation of each member employed during the whole or part of the preceding payroll period.

(b) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of section 75-7204.

(c) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system or the Montana state deaf and blind school, the legislative assembly shall appropriate to each employer an adequate amount to allow the payment of the employer's contribution.

(d) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under such budget.

(e) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation

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fund and the amounts required to allow regular interest on the annuity savings fund, *and* the annuity reserve fund shall be transferred to the respective funds from the pension accumulation fund.

(f) All pensions and benefits in lieu thereof, including pensions payable under section 75-6218, shall be paid from the pension accumulation fund.

(g) The retirement board may in its discretion transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also such expenses as hereinafter provided.

(4) **Expense fund.** The expense fund shall be the fund to which shall be credited all moneys for the administrative expenses of the retirement system and from which the expenses of administration of the retirement system shall be paid exclusive of amounts payable as retirement allowances or other benefits. The retirement board shall determine annually the amount required for the expense fund to defray the administrative expense in the ensuing fiscal year *and shall credit such an amount to the expense fund from interest and other earnings realized on the moneys of the retirement system."*

Section 4. Section 75-6208, R.C.M. 1947, is amended to read as follows:

"75-6208. **Benefits.** The retirement, disability and other benefits of the retirement system shall be granted on the basis of the following provisions:

(1) Superannuation member retirement:

(a) Any member who has completed five (5) years of creditable service, the last five (5) years of which shall have been in this state, and who has attained the age of sixty (60), *or who has completed thirty-five (35) years of creditable service,* may retire from service, if he files with the retirement board his written application setting forth the fact of his retirement.

(b) Any member in service who has attained the age of seventy (70) years during any school year shall be retired on the first day of September following his seventieth birthday, except that this provision shall not apply to teachers in the Montana university system who may be employed beyond the age of seventy (70) upon the recommendation of the president of the employing unit to the board of regents. Members over seventy (70) years of age shall not: (1) be allowed creditable service for services rendered after the end of the school year in which the age of seventy

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(70) is attained, (2) contribute to the retirement system after the end of such school year, and (3) have the compensation received after the end of such school year used in computing average final salary. Initial employment of teachers in the Montana university system beyond the age of seventy (70) may be made upon the recommendation of the president of the employing unit and the approval of the board of regents but such employees shall be denied membership in the retirement system.

(c) Any retired member may be employed as a teacher in Montana and may earn an amount not to exceed one-fourth (1/4) of his average final compensation without loss of retirement benefits.

(2) Allowance for superannuation retirement. Upon superannuation retirement a member shall receive a retirement allowance *which shall consist of:*

(a) A pension which, together with an annuity, shall provide a retirement allowance equal to one-half (1/2) of his average final compensation provided his creditable service is at least thirty-five (35) years, otherwise a pension together with his annuity of one-seventieth (1/70) of his average final compensation multiplied by the number of years of creditable service.

(b) The minimum annual retirement allowance for a member who has completed thirty-five (35) years of service shall be twenty-four hundred dollars ($2,400) and the minimum retirement allowance for a member whose service is less than thirty-five (35) years shall be based on the proportionate amount of twenty-four hundred dollars ($2,400) that his service bears to thirty-five (35) years of service.

(c) Every beneficiary receiving a retirement allowance on July 1, 1971 shall be entitled to an increase in his monthly retirement allowance of one dollar ($1) for each year of creditable service at the time of retirement up to a maximum of thirty-five dollars ($35), or an increase in his retirement allowance of ten percent (10%), whichever is larger, beginning July 1, 1973.

(d) Every beneficiary receiving a retirement allowance shall be entitled to an increase in his monthly retirement allowance on July 1, 1973 of one-fourth of one percent (.25%) multiplied by the number of months he has been retired since July 1, 1971, but if he is eligible under subsections (2)(a), (2)(b) or (2)(c) above, and the benefit thereunder is larger than the increased retirement allowance prescribed herein, this provision shall not apply.

(e) On July 1, 1974 and on July 1, 1975, every beneficiary receiving a retirement allowance shall be entitled to an increase in

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his monthly retirement allowance of one-fourth of one percent (.25%) multiplied by the number of months he has been retired during the preceding fiscal year.

(f) Any member who has completed five (5) years of creditable service, the last five years of which shall have been in this state, and who has attained the age of fifty-five (55) may retire from service and be eligible to an early retirement allowance if he files with the retirement board his written application setting forth the fact of his retirement. The early retirement allowance shall be determined as prescribed in subsections (a) through (f) above, with the further provision that such allowance will be reduced by one half of one percent (.5%) multiplied by the number of months which the retirement date precedes the date on which he would have retired had he attained sixty (60) years of age or had he completed thirty-five (35) years of creditable service.

(g) In the event of death of a member after retirement, a death benefit of five hundred dollars ($500) will be payable to his designated beneficiary.

(h) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) Disability member retirement:

(a) Upon the application of an active member or of his employer, any active member who has five (5) or more years of creditable service may be retired by the retirement board not less than thirty (30) and not more than ninety (90) days after the date of filing such application on a disability retirement allowance. Before any member shall be eligible for a disability retirement, the medical board of the retirement system shall certify that he is mentally or physically incapacitated for the further performance of his duties, that such incapacity is likely to be permanent and that he should be retired.

(b) If the applicant for disability retirement was prevented because of the disability from making application at the time of the commencement of his disability, the retirement board shall grant the disability retirement upon the proper application for disability retirement allowance and make payments retroactive to the thirtieth day after the date of commencement of his disability.

(c) Re-examination of beneficiaries retired on account of disability. Once each year during the first five (5) years following the retirement of a member on disability retirement allowance,

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and once in every three (3) year period thereafter the retirement board may, and upon his application shall, require a disability beneficiary who has not yet attained the age of sixty (60) to undergo a medical examination by the medical board or a physician or physicians designated by the medical board. The examination shall be made at the place of residence of the beneficiary or other place mutually agreed upon. Should any disability beneficiary who has not yet attained the age of sixty (60) refuse to submit to at least one (1) medical examination in any year by the medical board or its representative, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his disability pension may be revoked by the retirement board.

(d) Should the medical board report and certify to the retirement board that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and should the retirement board concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be changed later, the amount of his pension may be further modified but the new pension shall not exceed the amount of the pension originally granted, nor an amount which when added to the amount earnable by the beneficiary, together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired shall not become a member of the retirement system while receiving a reduced benefit.

(e) Should a disability beneficiary under age sixty (60) be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, and he shall again become an active member of the retirement system. Any prior service certificate on the basis of which his service was computed at the time of his disability retirement shall be restored to full force and effect an addition upon his subsequent retirement, he shall be credited with all his subsequent service as a member. Should he be restored to active service on or after the attainment of the age of fifty-five (55) years, his pension upon subsequent retirement shall not exceed the pension that he would have received had he remained in service during the period of his previous retirement nor the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new member.

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(4) Allowance for disability retirement. Upon retirement for disability, a member shall receive a superannuation allowance prescribed under subsection (2) above if he is eligible; otherwise he shall receive a disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement.

(b) A pension which together with his annuity, shall provide a total retirement allowance equal to one-seventieth (1/70) of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-quarter (1/4) of his average final compensation; otherwise, a pension which, together with his annuity, shall provide a total retirement allowance equal to one-quarter (1/4) of his average final compensation, provided, however, that no such allowance shall exceed one-seventieth (1/70) of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.

(c) In the event payments made to a person retired because of disability do not equal the amount of his accumulated contributions prior to his death, the difference between the total retirement allowance paid and the amount of the accumulated contributions of the member shall be paid to the beneficiary.

(5) Withdrawal of accumulated contributions. Any inactive member electing to do so or any person whose membership terminates *may* withdraw his accumulated contributions to his annuity account in the retirement system in accordance with the following provisions:

(a) An inactive member under the provisions of subsections (1) or (3) of section 75-6210 may elect, without right of revocation to withdraw his accumulated contributions, and if he does not withdraw his accumulated contributions he shall thereafter remain an inactive member of the retirement system with the right to qualify for the benefits of the retirement system;

(b) Upon recovery from a disabling illness or separation from the armed forces, any person qualifying as an inactive member under the provisions of subsection (2) of section 75-6210 *may* withdraw his accumulated contributions unless he returns to active membership.

(c) Any person whose membership terminates under the provisions of subsection (4) of section 75-6211 *may* withdraw his accumulated contributions.

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(6) Allowances for death of member.

(a) Should a member die before retirement the amount of the member's accumulated contributions shall be paid to his estate or such person as he may have designated in the manner prescribed by the retirement board which shall be filed with the board prior to the member's death.

(b) In lieu of benefits provided in (a) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be *determined as prescribed in subsections (2)(a) through (2)(h) assuming the member had elected option A as prescribed in subsection (7)(a) below. In addition, if the deceased member had five (5) or more years of creditable service and was an active member in the state of Montana within one (1) year prior to his death, a lump sum death benefit of $500 will be payable to his designated beneficiary.*

(c) If the deceased member had five (5) or more years of creditable service and was an active member in the state of Montana within one (1) year prior to his death, the sum of fifty dollars ($50) per month shall be paid to each minor child of the deceased member until such child reaches his eighteenth (18th) birthday.

(7) Optional allowances. With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active member at the time of his death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement or disability allowance payable throughout life as hereinabove provided. *This benefit shall be referred to as the normal form of retirement allowance. In lieu of normal form of retirement allowance, the member may elect an optional allowance which would be the actuarial equivalent at the time of his retirement or disability allowance and would provide an allowance payable throughout his lifetime and upon his death continue to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement with the provision that:*

(a) Option A. The optional allowance will continue to the member during his lifetime and upon his death, continue throughout the lifetime of his designated beneficiary; or

(b) Option B. The optional allowance will continue throughout his lifetime and upon his death, one-half (½) of his optional

allowance will be continued throughout the lifetime of his designated beneficiary; or

(c) Option C. The optional benefit will continue throughout his lifetime and upon his death, two-thirds (⅔) of the optional allowance shall be continued throughout the lifetime of his designated beneficiary; or

(d) Option D. The optional allowance shall continue while both the member and his designated beneficiary are living and upon the death of either, one-half (1/2) of the optional allowance shall be continued throughout the lifetime of the survivor; or

(e) Option E. The optional allowance will be payable while both the member and his designated beneficiary are living and upon the death of either, two-thirds (⅔) of the optional allowance shall be continued throughout the lifetime of the survivor; or

(f) Option F. Some other benefit or benefits shall be paid either to the member or his surviving designated beneficiary. The provisions of this retirement allowance shall be approved by the retirement board."

Section 5. Section 75-6212, R.C.M. 1947, is amended to read as follows:

"75-6212. **Membership application and creditable service.** Whenever a person becomes eligible for membership in the retirement system, he shall apply for such membership on the application form prescribed by the retirement board. The creditable service of a member shall begin on the receipt of the membership application by the retirement board and shall accumulate to the member's credit on the basis of the retirement board's policy governing creditable service.

The creditable service of any member shall include the following:

(1) each year of service of a member for which contributions to the retirement system were deducted from his compensation under the provisions of chapter 87, Laws of 1937, chapter 215, Laws of 1939, this act, and their subsequent amendments, except that no credit shall be awarded for those years of service for which the contributions have been withdrawn and not replaced; plus

(2) any out-of-state employment service awarded by the retirement board under the provisions of section 75-6213; plus

(3) any service awarded by a prior service certificate issued under the provisions of chapter 87, Laws of 1937, chapter 215, Laws of 1939 and their subsequent amendments, or under the provisions of section 75-6213; *plus*

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(4) the creditable service established by the retirement board under the provisions of this section shall be final and conclusive for the purposes of the retirement system unless, at any time, the retirement board discovers an error or fraud in the establishment of the creditable service, in which case the retirement board shall re-establish the creditable service; *plus*

(5) any service awarded for employment while on leave under section 75-6213."

Section 6. Section 75-6213, R.C.M. 1947, is amended to read as follows:

"75-6213. **Creditable service for out-of-state employment,** *employment while on leave, for active service in the armed forces of the United States and the American red cross or merchant marine,* **and before September, 1937.** Any person applying for membership also may apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this Title if such service were performed in the state of Montana. The person shall be awarded creditable service, conditional upon his completing five (5) years of active membership in Montana, for the number of years the retirement board determines to be creditable service but for not more than five (5) years, if he contributes to the retirement system an amount equal to five per cent (5%) of his first *full year's teaching salary* earned in Montana *after his out-of-state service* for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of five (5) years of membership service in Montana. The contributions may be a lump-sum payment or in installments as agreed between the person and the retirement board; *and*

(1) Any person applying for membership also may apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon completing five (5) years of active membership in Montana subsequent to his return, provided his employment while on leave enhanced his teaching experience as determined by the board. The person shall be awarded creditable service as determined by the board but for not more than two (2) years, if he contributes to the retirement system an amount equal to ten and three-eighths percent (10⅜%) of his first full year's teaching salary earned in Montana after his return from leave for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of five (5) years of membership service in Montana. The contribution may be a lump-sum pay-

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ment or in installments as agreed between the person and the retirement board; and

(2) Any person applying for membership also may apply for creditable service in the retirement system for active service in the armed forces of the United States which includes the army, navy, marine corps, air force and coast guard or in the American red cross or merchant marine. The person shall be awarded creditable service, conditional upon his completing five (5) years of active membership in Montana, for the number of years the retirement board determines to be creditable service but for not more than two (2) years, if he contributes to the retirement system an amount equal to ten and three-eights percent (10⅜%) of his first full year's teaching salary earned in Montana following the active service in the armed forces of the United States or in the American red cross or merchant marine plus interest at the rate the contribution would have earned had the contribution been in his account upon completion of five (5) years of membership service in Montana. The contribution may be a lump-sum payment or in installments as agreed between the person and the retirement board; however

(3) In no event will the total creditable service for out-of-state teaching, employment while on leave, or while on active service in the armed forces of the United States or the American red cross or merchant marine exceed five (5) years.

Whenever a member is retiring with at least *five (5) years* of creditable service and he has been an active member for at least five (5) consecutive school fiscal years, he may request creditable service for any employment service he rendered prior to the first day of September, nineteen hundred and thirty-seven (1937) for which he has not received a prior service certificate. In order to receive such creditable service, he shall apply for it and provide certification of such service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate."

Section 7. There is a new section to be numbered 75-6219, R.C.M. 1947, which reads as follows:

75-6219. **Establishment of a tax-deferred annuity program.** The retirement board shall establish a tax-deferred annuity program for teachers which shall conform with the provisions of section 403 (b) of the Internal Revenue Code. Contributions by members participating in the tax-deferred annuity program shall be maintained in individual accounts established for this purpose.

Approved: April 2, 1973.

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CHAPTER NO. 508

An Act Establishing a Program of Protective Services for the Mentally Disabled.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. As used in this act, unless the context otherwise requires.

(1) "Department" means the department of social and rehabilitation services.

(2) "Developmentally disabled person" means a person who by reason of a developmental disability is not able, unassisted, to properly manage or care for his person or his property.

(3) "Ward" means a person for whom protective services are rendered pursuant to the provisions of this act.

(4) "Respondent" means a person in whose interest proceedings are brought under this act.

Section 2. (1) In recognition of the need to provide supervision and protection from exploitation for the developmentally disabled, and in acknowledgment of the desirability of providing such services outside the state institutions, the legislative assembly hereby finds and declares that a program should be established by the department to provide protective services for the developmentally disabled. Such a program should be designed to provide the services set forth in this act for developmentally disabled persons.

(2) The director of the department shall adopt rules and regulations for the administration of this article. The department shall develop a statewide system of protective service in accordance with regulations and standards established by the department with respect to this program, the department may:

(a) provide direct services;

(b) enter into a contract with any responsible agency, public or private, for provision of protective service by the agency;

(c) accept appointment by any district court as guardian, trustee, protector, or trustee and protector of a mentally retarded or other developmentally disabled person.

Section 3. (1) Protective services may be provided on a voluntary basis for any developmentally disabled person who requests them for himself or at the request of any interested person, when the department determines that such person is a developmentally disabled person who would benefit from services

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provided in this act, and that the department is currently able to supply services to such person. A parent may name the department as guardian of the mentally disabled person in his will. A parent may also name the department as guardian or trustee of the mentally disabled person, to assume such duties during the parents lifetime. Voluntary services may be discontinued upon the written request of the ward or any personal representative of the ward.

(2) Application for protective services under this act shall be made to the designated field staff of the department or other designated state agency in the county in which the applicant resides, and the application shall be transmitted promptly to the department. Such application shall be in writing or reduced to writing in the manner and upon the form prescribed by the department and shall contain the name, age, and residence of the applicant and such other information as may be required by the rules and regulations of the department. The rules and regulations of the department shall simplify the application process in order that protective services may be furnished as soon as possible. Adequate safeguards shall be established by the department to insure that only eligible persons receive protective services under this act. The department shall notify the applicant and the designated field staff of the department or other designated state agency in writing of its decision concerning eligibility for protective services.

Section 4. (1) Any developmentally disabled person may be made a ward of the department by a judicial proceeding which shall be initiated when any reputable person, including the potential ward, or the department, shall file in the district court of the county in which the respondent resides or is physically present, a verified petition alleging that the respondent is a developmentally disabled person, describing the nature and extent of the respondent's disability, and alleging that it will be in the best interests of the respondent that he be made a ward of the department. The petition shall be accompanied by a report of the findings of an evaluation team composed of, but not limited to, a physician, a psychologist, and a social worker, and expressing the belief that the respondent is developmentally disabled to an extent which would cause the respondent to benefit from the protective services provided for in this act.

(2) Upon the filing of such verified petition and team evalution statement, the court shall issue an order fixing the time and place of a hearing on such petition, which time shall be no earlier than seven (7) days nor later than fourteen (14) days after the filing thereof. Such order shall appoint an attorney for the re-

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spondent, whose duty shall be to make such investigation as is necessary to protect the rights of the respondent and to attend all hearings in the matter. Such order also shall advise the respondent of his right to appear at the hearing, and shall give the address and telephone number of the attorney. Personal service shall be made on the respondent, the department, the county attorney, and attorney at least five (5) days prior to the hearing date. The department, the county attorney, and the attorney may waive service.

(3) Upon hearing, the petitioner shall present the evidence to the court. When the court is fully advised, it shall determine whether the respondent is a developmentally disabled person who would benefit from the protective services provided for in this act and whether it is in the best interest of the respondent that he be made a ward of the department and, if it is so found, the court shall enter an order that the respondent is made the ward of the department; otherwise, the petition shall be dismissed.

(4) In any order making the respondent a ward of the department, the court shall specify any legal disabilities to be imposed upon the ward. The order may contain, where appropriate, specific provisions concerning the right to operate a motor vehicle, the right to enter into contracts, or any other civil, political, personal, or property right. No person who becomes a ward of the department shall lose any legal right by reason thereof except as provided in this subsection (4).

(5) Every proceeding under this act shall be civil in nature and shall be entitled "In the interest of ....., respondent", or "In the interest of ....., ward", as the case may be.

Section 5. (1) The department shall provide, in the manner set forth, for each of its wards, those protective and supportive services which the department believes necessary to help the ward function, to the extent of his capabilities, as an independent, self-sufficient member of society. Services under this act may include, but shall not be limited to, assistance in obtaining:

(a) housing, clothing, and food;

(b) education and training for living in society and, where possible, for employment;

(c) employment;

(d) financial benefits to which the ward may be entitled;

(e) medical services and supplies;

(f) necessary legal services;

(g) marshaling, protection, and insurance of the ward's property;

(h) financial advice and services;

(i) participation in cultural and recreational activities.

(2) Services under this act also may include, but shall not be limited to, assistance in preventing exploitation of the ward by others, and in preventing injury to the ward and injury by the ward to others.

Section 6. The department may be appointed as conservator of the estate of any person adjudicated developmentally disabled, if the department is providing protective services for such person, and if it shall appear to the court that the value of the assets of such person does not exceed ten thousand dollars ($10,000), and that there is no other person or institution whose appointment in such capacity would be more appropriate. The department shall report annually to the court which appointed it on the discharge of its duties an conservator of an estate under this section and shall otherwise be subject to the requirements of a general guardian.

Section 7. The department shall engage in the direct provision of protective services to wards. If a service comprehended by this act is provided by persons or agencies acting under other state or federal laws, the department shall cooperate with such persons or agencies in obtaining such services for wards of the department. If necessary services cannot be obtained without charge, the department may purchase such services from individuals, voluntary agencies, community centers, or clinics and, to the extent not prohibited by law, from other state agencies.

Section 8. The department shall not be required to post bond in proceedings under this act unless serving as a court-appointed conservator as provided in section 6 in which case it shall furnish such bond as required by law.

Section 9. (1) If the income from the assets available to a ward suffice, the department may require such ward, the custodian, guardian, or concervator of such ward, or, if the governing instrument permits, the trustee of such ward, to pay all reasonable and proper costs of proceedings in the interest of such ward under this act, including, without limitation, court costs, sheriff fees, attorney fees, and costs of diagnostic services, and to pay for protective services rendered to the ward, or to reimburse the department for funds expended for such costs or services.

Upon a written petition filed by the department, the court

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by which the department was appointed may permit annual expenditure of up to three per cent (3%) of the principal assets if such expenditure be shown to be of special advantage for the ward. The department shall file an accounting each year and the court by which the department was appointed shall conduct a hearing to determine the propriety of any charge or charges to a ward. All of the provisions of subsections (2) and (3) of section 4 concerning notice and hearings shall apply to hearings under this section. Upon such hearing, the court shall enter its order approving, disapproving, or modifying such charge or charges. The order of the court may be prospective as to charges of a recurring nature which reasonably may be anticipated.

(2) Except as provided in subsection (1) of this section, the net cost of proceedings under this act and of services provided by the department shall be paid from moneys appropriated for that purpose by the legislature or from moneys available from any other governmental or private source. Claims for state reimbursements shall be presented to the department at such times and in such manner as the department may prescribe. The department shall certify to the department of administration the amount. The amount so certified shall be paid from the state treasury upon the voucher of the department and the warrant of the department of administration.

Section 10. (1) With respect to each ward, designated field staff shall file a written report with the director of the department no later than June 30, 1974, and annually thereafter setting forth the services which have been provided for the ward, including specifically an accounting for any transactions with property of the ward, other than as a court-appointed conservator, the current condition of the ward, and the recommendations of the department as to whether its services should continue or be terminated, and whether other proceedings should be instituted. If the department is serving pursuant to court order under section 4, a copy of such report also shall be filed with such court.

(2) No later than December 31, 1974, the director of the department shall present a complete report to the legislature on the program authorized by this act, with special emphasis on an evaluation of the success of the program, all relevant expenses, and projections of the cost of extending the services provided for in this act to all eligible developmentally disabled persons in this state.

Section 11. Upon the written request of the ward, the department, or any other reputable person, or upon its own motion, the appointing court shall hold a hearing to determine whether the appointment of the department should be terminated or con-

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tinued. All of the provisions of subsections (2) and (3) of section 4 concerning notice and hearing shall apply to hearings under this section. No ward may request such hearing more frequently than at six (6) month intervals. Upon such hearing, the court shall enter its order continuing or terminating the appointment of the department.

Section 12. The clerk of the district or probate court shall maintain records and papers in proceedings under this act separately. The information contained in such records shall be available to public officials, attorneys, and persons having bona fide business dealings with the respondents concerned.

Section 13. The department may accept and expend grants, gifts, and legacies of money and other property, including federal grants, on behalf of the state of Montana, in furtherance of the purposes of this act, subject to any reasonable and proper conditions any donor may attach which are acceptable to the executive director of the department and which do not violate the constitution, laws or public policy of the state of Montana.

Section 14. The legislature hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 2, 1973.

CHAPTER NO. 509

An Act to Amend Sections 69-5001, 69-5002, 69-5003, and 69-5005, R.C.M. 1947, by Broadening the Statement of Public Policy to Include Solid Waste Disposal and to Refer to Quality of Water for All Uses; Revising the Definition of Subdivision; Adding Other Definitions; Revising the Provisions for Making Rules and Standards; Requiring Approval of Subdivision Plats and Plans and Specifications by the Department of Health Before Filing with County Clerk and Recorder; Providing for Enforcement Proceedings and Hearings on Alleged Violations; Providing Remedies and Sanctions Relating to Violations; Providing for use of Records and Cooperation of Other Agencies; and Providing for Effect of Invalidity of Part of Act.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 69-5001, R.C.M. 1947, is amended to read as follows:

"69-5001. **Public policy of the state.** It is the public policy

of this state to extend present laws controlling water supply, sewage disposal, *and solid waste disposal* to include individual wells affected by adjoining sewage disposal and individual sewage systems *to protect the quality and potability of water for public water supplies and domestic uses; and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation and wildlife.''*

Section 2. Section 69-5002, R.C.M. 1947, is amended to read as follows:

''69-5002. *Definitions.....As used in this chapter unless the context clearly indicates otherwise the following words or phrases shall have the following meanings:*

(1) ''Subdivision'' means the division of land, or land so divided, into two (2) or more parcels, whether contiguous or not, any of which is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof, in order that the title or possession of the parcels or any interest therein may be sold, rented, leased, or otherwise conveyed either immediately or in the future, and shall include any resubdivision of land; and shall further include any condominium or areas providing multiple space for camping trailers, house trailers or mobile homes; provided further that a division of land is a subdivision when the division creates a second or any subsequent parcel for the purpose of sale, rent, lease, or other conveyance from a tract of land held in single or undivided ownership on July 1, 1973, where any of the parcels segregated from the original tract is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof. The plat of a subdivision so created shall show all of the parcels segregated from the original tract whether contiguous or not.

(a) "Subdivision" shall include any condominium or areas providing multiple space for camping trailers, house trailers, or mobile homes, regardless of the size of the parcel of land upon which the same is situated.

(2) "Board" means the board of health and environmental sciences.

(3) ''Department'' means department of health and environmental sciences.

(4) ''Sanitary restriction'' means a prohibition against the erection of any dwelling, shelter or building requiring facilities for the supply of water or the disposition of sewage or solid waste until the department has approved plans for those facilities.

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(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste.

(6) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes."

Section 3. Section 69-5005, R.C.M. 1947, is amended to read as follows:

"69-5005. **Rules for administration and enforcement of chapter.**. *(1)* The *department* shall *adopt reasonable* rules, including adoption of sanitary standards, necessary for administration and enforcement of this chapter.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, *and solid waste disposal,* both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, *distance from lakes, streams, and wells,* type of construction of private water and sewage facilities, and other factors affecting public health *and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.*

(3) The rules shall further provide for:

(a) the furnishing to the department of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area,

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity and dependability will be available to ensure an adequate supply of water for the tpye of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(e) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

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(f) standards and technical procedures applicable to water systems;

(g) standards and technical procedures applicable to solid waste disposal;

(h) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat."

Section 4. Section 69-5003, R.C.M. 1947, is amended to read as follows:

"69-5003. *Filing of map or plat with county clerk and recorder (1) A person may not file a subdivision plat with a county clerk and recorder, make disposition of any lot within a subdivision, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent building in a subdivision when the status of the subdivision is conditional; and a county clerk and recorder may not accept a subdivision plat for filing until:*

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department; and

(b) the department has indicated by stamp or certificate, that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction.

(2) A person may not construct or use any facilities which deviate from the plans and specifications filed with the department until the department has approved the deviation."

Section 5. **Request for hearing.** Upon denial of approval of subdivision plans and specifications relating to environmental health facilities the person who is aggrieved by such denial may request a hearing before the board. Such hearings will be held pursuant to the Montana Administrative Procedure Act.

Section 6. **Enforcement.** (1) If a written complaint alleging violation is made to the department, or if the department has reason to believe that a person has violated this act or any rule thereunder, and if a violation is found to exist, the department shall issue notice and hold a hearing pursuant to the Montana Administrative Procedure Act. In addition to or instead of issuing

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an order, the department may initiate appropriate action for injunction or for recovery of penalty as provided in the act.

Section 7. **Penalties.** (1) A person violating any provision of the act or any rule or order issued under this act is guilty of an offense and subject to a fine of not to exceed one thousand dollars ($1,000).

(2) Action under subsection (1) of this section does not bar enforcement of this act or rules or orders issued under it by injunction or other appropriate remedy.

(3) The purpose of this section is to provide additional and cumulative remedies. This act does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this chapter or any act done by virtue of it estop the estate, any municipality or other subdivision of the state, or any person in the exercise of his rights in equity or under the common law or statutory law.

Section 8. **Records of state and other agencies.** The department may require the use of records of all state, county and municipal agencies and may seek the assistance of those agencies. State, county and city officers and employees, including local health officers and sanitarians, shall cooperate with the board and the department in furthering the purposes of this act, so far as is practical and consistent with their own duties.

Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

Approved: April 2, 1973.

CHAPTER NO. 510

An Act Relating to the Financing of the Long-Range Building Program, by the Issuance of Bonds Payable From Special Taxes Appropriated Therefor and Further Supported by the Pledge of the Full Faith and Credit of the State; Amending Sections 79-2201 through 79-2205, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 79-2201, R.C.M. 1947, is amended to read as follows:

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"79-2201. **Definitions and establishment of funds.** (1) Long-range building program means and includes all buildings, structures and facilities to be constructed, repaired, used, equipped or furnished and land to be acquired therefor with the consent of the legislative assembly in accordance with sections 82-3314 to 82-3318, inclusive.

(2) Long-range building program bonds mean and include all series of bonds issued to finance any portion of the long-range building program *or to refund outstanding bonds, as authorized in this chapter.*

(3) Sinking fund account means a separate long-range building program subfund which is created within the sinking fund established in section 79-410, and shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay long-range building program bonds and interest thereon when due, so long as any such bonds or interest remain unpaid.

(4) Clearance fund account means a separate long-range building program subfund which is created within the bond and insurance clearance fund established in section 79-410, and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the long-range building program, upon order of the *department of administration* acting within the limits of the authority conferred upon *it* by the legislative assembly.

(5) Board, *department* and treasurer mean the state board of examiners, *department of administration* and state treasurer, respectively."

Section 2. Section 79-2202, R.C.M. 1947, is amended to read as follows:

"79-2202. **Long-range building program bonds.** (1) When authorized by the *vote of two-thirds (⅔) of the members of each house of the legislature, or of a majority of the electors voting thereon if so provided by law,* and within the limits of such authorization and the further limitations in this section, the board may issue and sell bonds of the state of Montana in such manner as it shall deem necessary and proper to provide funds to finance the long-range building program. Bonds may be issued hereunder to provide funds for the payment or redemption of the outstanding War Veterans' Compensation Bonds and World War I Veterans' Compensation Bonds issued pursuant to Initiative No. 54, and the amendment thereof, chapter 270, Laws of 1963, and long-range building program bonds issued under this section. *The full faith and credit and taxing powers of the state of Montana shall be*

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pledged for the payment of all bonds issued pursuant to this chapter after January 1, 1973, with all interest thereon and premiums payable upon the redemption thereof.

(2) Each series of such bonds shall be issued by the board upon request of the *department of administration,* in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at such rate or rates, maturing at such times not exceeding thirty (30) years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agency of the state of Montana, as the board shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of such bonds, the amount, maturities and interest rates thereof shall be fixed in such manner that the maximum amount of principal and interest to become due in any subsequent fiscal year, on all such bonds then outstanding and on the series so to be issued, will not exceed fifty per centum (50%) of the average annual amount collected during the three (3) then next preceding fiscal years, from the special taxes pledged by law to the sinking fund account at the time of such issuance; *except that this provision shall not constitute a covenant of the state for the security of the bonds issued pursuant to this chapter after January 1, 1973, and the state reserves the right to amend this subsection (3) in any manner after all bonds issued prior to that date, and the interest thereon, have been fully paid or the state's liability thereon has been otherwise fully discharged.*

(4) In all other respects the board is authorized to prescribe the form and terms of the bonds, and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the state board of examiners, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(5) All proceeds of bonds issued hereunder shall be deposited in the clearance fund account, except that any premiums and accrued interest received shall be deposited in the sinking fund account. For the purposes set forth in subdivision (1) hereof, the state treasurer acting by and with the approval of the state board of examiners may set aside such funds as may be necessary to

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assure the redemption, or payment at maturity, of all of the outstanding War Veterans' Compensation Bonds and World War I Veterans' Compensation Bonds and as may be necessary or required to fulfill the obligations of the state of Montana by virtue thereof. With such funds the state treasurer with the approval of the state board of examiners is hereby authorized to call said bonds for redemption in accordance with the provisions thereof, at any redemption date, to pay said bonds on the maturity dates thereof, to deposit securities in escrow for the purpose of assuring such payments at future dates, and to take such other steps as may be necessary to fulfill all of the obligations of the state of Montana existing under the provisions of said bonds and the laws and resolutions authorizing the same.

(6) The state board of examiners is hereby authorized to employ a fiscal agent to assist in the performance of its duties hereunder."

Section 3. Section 79-2203, R.C.M. 1947, is amended to read as follows:

"79-2203. **Sinking fund account.** (1) From and after the pledge and appropriation of any special tax to the sinking fund account, as provided and contemplated in this section, such tax shall continue in force and shall be available and shall be pledged and appropriated for the payment of long-range building program bonds, and all moneys received from the collection thereof shall be deposited by the treasurer to the credit of the sinking fund account. *No special taxes pledged to the sinking fund account on January 1, 1973, shall be discontinued or diverted to other funds until all bonds issued pursuant to this chapter prior to that date and the interest thereon have been fully paid or the state's liability thereon has been fully discharged, except to the extent, if any, that the right so to do has been reserved in the resolutions authorizing the issuance of such bonds. Subject to the foregoing provisions of this subsection (1), the state reserves the right to modify from time to time the nature and amount of special taxes to be deposited to the credit of the sinking fund account.*

(2) Money in the sinking fund account shall be used first to pay interest and principal when due on long-range building program bonds; second to accumulate a reserve in the amount required below, for the further security of such payments; and third to maintain this reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal which will become due on all such bonds which are then outstanding in any subsequent fiscal year.

(3) Money at any time received in the sinking fund account

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in excess of the principal, interest and reserve requirements stated in subsection (2) shall be transferred by the treasurer to the general fund. If the balance at any time on hand in the sinking fund account is not sufficient for compliance with subsection (2), the treasurer shall credit to said account an amount sufficient to restore said balance from the next collections of the special taxes appropriated to said account, and from any other collections of taxes appropriated to the general fund, not exceeding the aggregate amount theretofore transferred from the sinking fund account to the general fund.

(4) The state reserves the power, by enactment of the legislative assembly or the people, to levy, impose and assess and to pledge and appropriate to the sinking fund account any tax specially designated therein, or any specified amount or percentage of the collections of such special tax. The state also reserves the power to appropriate any funds designated by enactment of the legislative assembly or the people for the redemption and prepayment of any long-range building program bonds, or to authorize the issuance and sale of bonds for the purpose of refunding any such outstanding bonds or interest thereon, upon such terms and conditions as may be provided in said enactments and consistent with covenants and agreements made for the security of the outstanding bonds. Refunding bonds issued in advance of the maturity of the bonds refunded shall be issued only subject to the conditions stated in subsection (3) of section 79-2202, substituting for this purpose the principal and interest requirements of the refunding bonds for those of the bonds refunded. Nothing herein shall prevent the board from issuing and selling refunding bonds, payable from the sinking fund account, to provide funds for payment of principal or interest due on long-range building program bonds, when and if and to the extent that the sinking fund account is insufficient for this purpose.

(5) The state pledges and appropriates, and directs to be credited as received to the sinking fund account, eleven per centum (11%) of all money received from the collection of the income tax and the corporation license tax referred to in section 84-1901, and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section; provided that no more than eleven per centum (11%) of such tax collections shall be deemed to be pledged for the purpose of subsection (3) of section 79-2202. The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(6) The state pledges and appropriates and directs to be

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credited to the sinking fund account fifteen per centum (15%) of all money received from the collection of the nine cents (9¢) excise tax on cigarettes which is levied, imposed and assessed by section 84-5606, subdivision (2). The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of each of the excise taxes on cigarettes which are levied, imposed and assessed by section 84-5606, subdivisions (3) and (4), as amended, after the payment and redemption in full of the outstanding bonds for which said taxes have heretofore been pledged and appropriated, or after the necessary funds have been set aside for such payment and redemption as provided in this *chapter*. The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed and assessed by law for that purpose including the tax levied, imposed and assessed by section 84-6802, R.C.M. 1947. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the War Veterans' Compensation Bonds, the World War I Veterans' Compensation Bonds or the presently outstanding long-range *building* program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subdivision (6)."

Section 4. Section 79-2204, R.C.M. 1947, is amended to read as follows:

"79-2204. **Waiver of security provisions.** If so stated in any series of bonds issued hereunder, the purchasers and holders thereof may by their purchase and *retention* of the same waive in whole or in part the security otherwise made available for such bonds by any provision of this *chapter*."

Section 5. Section 79-2205, R.C.M. 1947, is amended to read as follows:

"79-2205. **Authorization of bonds.** The board is authorized to issue and sell long-range building program bonds in an amount not exceeding *two million five hundred thousand dollars ($2,500,000)*, over and above the amount of the long-range building program bonds outstanding January 1, *1973*, upon the conditions and in the manner stated in this chapter. The board is also authorized to issue and sell long-range building program bonds in such amount as may be required to provide funds for the payment or redemption of outstanding bonds as contemplated in section 79-2202, subdivisions *(1) and (5) and section 72-2203, subdivision (4)*."

Approved: April 2, 1973.

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CHAPTER NO. 511

An Act for the Codification and General Revision of the Laws Relating to the Department of Fish and Game.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section numbered 26-101.1, R.C.M. 1947, which reads as follows:

26-101.1. **Definitions.** Unless the context requires otherwise, in title 26:

(1) "Department" means the department of fish and game provided for in title 82A, chapter 20;

(2) "Director" means the director of fish and game provided for in section 82A-2003;

(3) "Warden" means a state fish and game warden;

(4) "Commission" means the state fish and game commission provided for in section 82A-2004.

Section 2. Section 26-103, R.C.M. 1947, is amended to read as follows:

"26-103. **Meetings.** The members of the commission shall hold quarterly or other meetings for the transaction of business, at times and places it *considers* necessary and proper. *The* meetings *shall* be called by the chairman, or by a majority of the commission, and *shall* be held at the time and place specified in the call for the *meeting.* A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The commission shall keep a record of all the business transacted by it. The chairman and secretary shall sign all orders, minutes, or documents for the commission. *The principal offices of the commission and department shall be located in or near Helena and suitable and adequate space therefor together with janitor services, light, heat and water shall be furnished by the state of Montana. Rental shall be charged therefor at a rate not to exceed four dollars ($4) per square foot per year for the total space occupied. Such rental collected shall be deposited to the credit of the state general fund.*"

Section 3. Section 26-104, R.C.M. 1947, is amended to read as follows:

"26-104. **Powers and duties of commission.** (1) The commission shall *supervise* all the wildlife, fish, game, *game* and nongame birds, and waterfowl, and the game, and fur-bearing animals of the state. *It possesses* all powers necessary to fulfill the duties

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prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the commission.

(2) It shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals *and* game and nongame birds within the state.

(3) It shall have the exclusive power to *spend* for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all *state* funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. *Moneys* collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines *or* damages collected for violations of the fish and game laws, from appropriations, or received by the commission from any other sources are appropriated to and under control of the commission.

(4) It *may* discharge any appointee or employee of *the* commission for cause at any time.

(5) It *may* dispose of all property owned by the state, used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds, which *is* of no further value or use to the state, and shall turn over *the* proceeds *from the sale* to the state treasurer to be credited to the fish and game *account in the earmarked revenue fund.*

(6) It may not issue permits to anyone to carry firearms within *this* state, except to regularly appointed officers *or* wardens.

Section 4. There is a new section numbered 26-104.3, R.C.M. 1947, which reads as follows:

26-104.3. **Fixing of general and special seasons and bag and possession limits.** (1) The commission may fix seasons, bag limits, possession limits, and season limits; open or close, shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by section 26-201, and declare areas open to the hunting of deer, antelope, and elk by bow and arrow permit holders, and designate times when only bow and arrows may be used to hunt deer, antelope, and elk in those areas. It may declare areas open to deer hunting where shotguns only may be used to hunt or kill deer. It may declare areas open to special license holders only, and issue special licenses in a limited number when it determines, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish, animals, or fur-bearing animals. It may declare a special season and issue special licenses when game birds or

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animals or fur-bearing animals are causing damage to private property, or when written complaint of such damage has been filed with the state fish and game commission by the owner of that property. In determining to whom those licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system shall be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles, by archers, during special archery seasons.

(3) It may divide the state into fish and game districts, and create fish, game, or fur-bearing animal districts throughout the state. It may declare closed season for hunting, fishing, or trapping in any of those districts, and later may open those districts to hunting, fishing, or trapping.

(4) It may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. It may close any area or district of any stream, public lake, or public water, or portions thereof, to hunting, trapping, or fishing for limited periods of time, when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations, or to prevent the undue depletion of fish, game and fur-bearing animals, and game and nongame birds. It later may open the area or district upon consent of a majority of the property owners affected.

(5) It may declare certain fishing waters closed to fishing except by persons under thirteen (13) years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under thirteen (13) years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing.

Section 5. There is a new section numbered 26-104.4, R.C.M. 1947, which reads as follows:

26-104.4. **Acquisition, importation, and propagation of fish, game, game birds, and fur-bearing animals—introduction and propagation of waterfowl food.** The commission may: (1) Acquire by gift, purchase, capture, or otherwise any fish, game, game birds, or animals, for propagation, experimental, or scientific purposes.

(2) Provide for the importation of game birds and game and fur-bearing animals and for the protection, propagation, and distribution of imported or native birds and animals.

(3) Use fish and game funds necessary for the construction,

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maintenance, operation, upkeep, and repair of fish hatcheries, game farms or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals or game or nongame birds. It may appropriate moneys from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game, or fur-bearing animals, or game or nongame birds.

(4) Spend fish and game funds necessary to introduce and propagate wild waterfowl food and for that purpose may secure expert advice as to what kinds of waterfowl foods are adapted to the climate, soil, and waters of this state.

Section 6. There is a new section numbered 26-104.5, R.C.M. 1947, which reads as follows:

26-104.5. **Construction and maintenance of fish hatcheries and fish ladders.** (1) The commission shall furnish plans for, direct, and compel the construction, installation, and repair of fish ladders upon dams and other obstructions in streams. The fish ladders shall be installed and maintained at the expense of the owners of the dam or other obstruction.

(2) The commission may purchase and maintain at the expense of the state fish and game fund suitable fish screens or fish wheels, or other devices, to install in irrigating ditches to prevent fish entering said ditches.

(3) The commission may locate, lay out, construct, and maintain nurseries and rearing ponds where fry can be planted, propagated, and reared to be distributed in the waters of this state. The commission may spend from fish and game funds, sums necessary for this purpose.

Section 7. There is a new section numbered 26-104.6, R.C.M. 1947, which reads as follows:

26-104.6. **Acquisition and sale of lands or waters by commission.** (1) The commission may acquire by purchase, condemnation, lease, agreement, gift, or devise, and may acquire easements upon lands or waters for the purposes listed in this subsection. The commission may acquire, develop, operate, and maintain acquired lands or waters:

(a) For fish hatcheries, nursery ponds, or game farms;

(b) As lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) For public hunting, fishing, or trapping areas;

(d) To capture, propagate, transport, buy, sell, or exchange

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any game, bird, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes, or to exercise control measures of undesirable species;

(e) To extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The commission may dispose of lands and waters acquired by it on those terms after that public notice, and without regard to other laws which provide for sale or disposal of state lands, and with or without reservation, as it considers necessary and advisable. Notice of sale describing the lands or waters to be disposed of shall be published once a week for three (3) successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated, or if no newspaper is published in that county then in any newspaper with general circulation in that county. The notice shall advertise for cash bids to be presented to the commission or the director within thirty (30) days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to ten percent (10%) of the amount bid. The highest bid shall be accepted upon payment of the balance due within ten (10) days after mailing notice by registered mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification. The commission shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the commission. The commission shall convey the lands and waters by deed without covenants of warranty, executed by the governor, or in his absence or disability by the lieutenant governor, attested by the secretary of state, and further countersigned by the chairman of the commission. The deed shall be attested by the secretary of the commission, but need not be acknowledged.

Section 8. There is a new section numbered 26-104.7, R.C.M. 1947, which reads as follows:

26-104.7. **Cooperative research, training, and other projects — educational and biological programs.** (1) The commission may enter into cooperative agreements with educational institutions and state, federal, or other agencies to promote wildlife research and to train men for wildlife management. It may enter into cooperative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of game, bird, fish, or fur-bearing animal management and demonstration projects.

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(2) It may establish and maintain an educational and biological program for the collection and diffusion of statistics and information germane to the purpose of this title.

Section 9. There is a new section numbered 26-104.8, R.C.M. 1947, which reads as follows:

26-104.8. **Creation of fish and game refuges.** (1) The commission may establish and close to hunting, trapping, or fishing, any game, bird, or fish refuge on public lands and, with the consent of the owner, on private lands. It may close streams, lakes, or parts of them, to hunting, trapping, or fishing.

(2) The commission may establish game refuges in which game and fur-bearing animals, game or nongame birds may breed and replenish. These refuges shall be established by order of the commission upon petition and proper showing that the action is, in judgment of the commission, necessary and in the best interest of the wildlife within the area to be included in the refuge. The purpose of this provision is to establish small refuges rather than large preserves or rather than close large areas to hunting or trapping.

(3) The commission may designate and protect certain areas as resting, feeding, and breeding grounds for migratory birds, in which hunting and molestation are forbidden. The purpose of this provision is not to interfere unduly with the hunting of waterfowl, but to provide havens in which they can rest, feed, and breed without molestation.

(4) After a petition has been duly filed with the secretary of the commission requesting that an area be set aside as a game refuge, the secretary shall immediately publish a notice in a paper of general circulation in the county in which the area is located. The notice shall state that a hearing on the matter will be held at a designated place in the county not less than fifteen (15) days after first publication, at which time and place all interested parties may appear and be heard.

Section 10. There is a new section numbered 26-104.9, R.C.M. 1947, which reads as follows:

26-104.9. **Regulation of use of lands.** (1) The commission may adopt and enforce rules governing uses of lands acquired or held under easement by the commission, or lands which it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules shall be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements shall itemize uses as listed in section 26-104.6.

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(2) The commission may adopt and enforce rules governing recreational uses of public fishing reservoirs and lakes constructed by the commission or on reservoirs and lakes which it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules shall be adopted in the interest of public health, public safety, and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, water skiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs or at designated areas along the shore of the reservoirs. These rules are subject to review and approval by the department of health and environmental sciences as to public health and sanitation before becoming effective. Copies of the rules shall show that endorsement.

Section 11. Section 26-106, R.C.M. 1947, is amended to read as follows:

"26-106. *Director of* **fish and game — qualifications — powers — duties.** *The director of* fish and game shall be the secretary of the commission, attend the meetings of *the* commission, and keep a record of all of its transactions. *The director* shall keep an inventory showing the description and value of all property owned by the state and under the administration of *the* commission. He shall be the administrative agent of the commission *and* custodian of the property and records of the department. He shall devote all of his time to his official duties *and his powers and duties include those of a warden.* He *is* subject to the supervision and control of *the* commission. The director *may,* by and with the consent of the commission, establish such department divisions and employ the necessary personnel that may be needed to conduct the work of the department. The director *shall be paid a salary fixed by the commission and shall be reimbursed for his actual and necessary expenses incurred while in the performance of his duties,* the same to be paid upon proper vouchers from the fish and game *account in the earmarked revenue* fund."

Section 12. Section 26-110, R.C.M. 1947, is amended to read as follows:

"26-110. **Qualifications, powers, and duties of wardens.** (1) *Wardens* shall be *qualified by their* experience, training, and skill in protection, conservation, and propagation of wildlife, game, and fur-bearing animals, fish and game birds, and interested in *this* work. *They* shall devote all of their time for which they are appointed to their official duties.

(2) *They* shall *enforce* the laws of *this* state and the rules of the commission with reference to the protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

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(3) *They* shall see that *persons* who hunt, fish, or take game, or fur-bearing animals, game birds, or fish, have necessary licenses.

(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, *and* game and nongame birds, and assist in the planting, distributing, feeding, and *care of* fish, game, fur-bearing animals, and game and nongame birds. *They* shall, when ordered by the commission, assist in the destruction of predatory animals, birds, and rodents. *They* shall perform all other duties prescribed by the commission, and make a monthly report to *the* commission correctly informing the commission of *their activities on* each day of the preceding month, with regard to the enforcement of the fish and game laws, showing where *their* duties called *them,* and what *they did,* and *the reports* shall contain any pertinent recommendations *the wardens* may see fit to make.

(5) A warden may not compromise or settle out of court violations of fish and game laws.

(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals and fur-bearing animals at reasonable times and at any location other than a residence or dwelling and, upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals and fur-bearing animals shall exhibit the same, and all thereof, to the warden for such inspection.

Section 13. There is a new section numbered 26-110.3, R.C.M. 1947, which reads as follows:

26-110.3. **Powers of wardens — enforcement — search and seizure — arrest.** A warden may: (1) Serve a subpoena issued by a court for the trial of a violator of the fish and game laws;

(2) Search, without a warrant, any tent not used as a residence, boat, vehicle, box, locker, basket, creel, crate, game bag, package, or their contents, upon probable cause to believe that any fish and game law or commission rule, for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals, has been violated;

(3) Search, with a search warrant, any dwelling house or other building;

(4) Seize game, fish, game birds, and fur-bearing animals, and any parts of them, taken or possessed in violation of the law or the rules of the commission;

(5) Seize and hold, subject to law or the orders of the commission, devices which have been used to unlawfully take game, fish, birds, or fur-bearing animals;

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(6) Arrest, in accordance with title 95, chapter 6, a violator of a fish and game law or rule of the commission, violation of which is a misdemeanor;

(7) Exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the commission, and judgments obtained for violation of those laws or rules.

Section 14. Section 26-115, R.C.M. 1947, is amended to read as follows:

"26-115. *State fish hatcheries.* The director *has* general supervision over all *fish* hatcheries in the state. The output of all hatcheries shall be used to stock the lakes and streams of the state and shall be for free and impartial distribution. *Distribution shall* be under the direction of *the department* subject to an official order of the director. The director *may* exchange spawn or fish with other states or persons for distribution in this state."

Section 15. Section 26-117, R.C.M. 1947, is amended to read as follows:

"26-117. **Powers and duties of** *department pertaining to* **state fisheries.** The *department has* full control of all state fish hatcheries and *is* responsible for their construction, maintenance, and operation. All *that* construction work done under contract or otherwise, shall be done under control and supervision of *the director.* The *department shall administer the* taking and collecting *of* all spawn, the hatching of all spawn and eggs, *and the* rearing, *propagation,* and distribution of fry, fingerlings, and fish. *The department may* purchase *as* many eyed eggs as *are* necessary to keep the hatcheries of the state supplied with eggs and in full operation. *The department* shall make every reasonable effort to collect sufficient eggs from the public streams or lakes of this state to supply *the* hatcheries, and for that purpose *may* build, equip, and use fish traps and nets at any *time* of the year in all public waters. *The department may* purchase the eyed eggs of fish not propagated in this state for the purpose of stocking the waters of this state."

Section 16. Section 26-118, R.C.M. 1947, is amended to read as follows:

"26-118. *Commission* **to control state waters for propagation of fish.** *The* commission *may* control the waters of any lake, pond, or stream, which *lies* wholly within the limits of land owned by the state, so far as the use of *that* lake, pond, or stream for the breeding and propagation of game fish is concerned. Before *the* right to control any lake, pond, or stream *inures* to the commission, the chairman of *the* commission *shall* notify the *department of state lands* that *the* lake, pond, or stream is wanted for *that* purpose,

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giving a description of the land by legal subdivision when surveyed, or a sufficient general description when not so surveyed. *The department of state lands shall* make *that* entry upon *its* books and maps as may serve as notice to *a* lessor or purchaser of the right claimed by the state in *the* lake, pond, or stream. *The department of state lands* shall notify *a* lessor, purchaser, or applicant to lease or purchase of the fact that a right to the use of *the* lake, pond, or stream is so claimed. *This* right *may not* continue for more than one year after *the* land is sold by the state. *If* the right to the control of *a* lake, pond, or stream lessens the value of *that* land or prevents the ready sale *of it,* the right granted to the commission may be terminated upon giving sixty *(60)* days' notice of *the* termination to the chairman of the commission."

Section 17. Section 26-121, R.C.M. 1947, is amended to read as follows:

"26-121. **State fish and game moneys.** (1) All moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from appropriations, or received by the commission from any other state source, shall be turned over to the state treasurer, and placed by him in the earmarked revenue fund to the credit of the commission. *Out of any fine* imposed by a court for the violation of *the fish and game laws,* the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution. Any moneys received from federal sources shall be deposited in the federal and private revenue fund to the credit of the commission.

(2) *Those* moneys *shall be* exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the commission under the terms of this *title. Those* moneys shall be *spent* for *those* purposes, by *the* commission, subject to appropriation by the *legislature.*

(3) Any reference to the fish and game fund in this code *means* fish and game moneys in the earmarked revenue fund and federal and private revenue fund."

Section 18. Section 26-123, R.C.M. 1947, is amended to read as follows:

"26-123. **Salaries, per diem and expenses, how paid.** All salaries, per diem, expenses, and claims incurred by the commission, or *a* person appointed or employed by them, shall be paid out of fish and game *moneys in the earmarked revenue fund,* upon warrants

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properly drawn *on those funds. The* aggregate of all salaries, per diem, expenses, and claims presented for payment shall not exceed at any time the total amount *of* fish and game *moneys in that* fund. The commission shall approve all bills properly presented which have been incurred under its authority and by its direct order. The expenses of all *wardens* shall be approved by the *director* before they are paid. *The* salary, per diem, or expenses of *an* employee employed in the propagation or distribution of fish shall be approved by the *director* before they are paid. All items of expense, amounting to more than one and one-half dollars *and* incurred by anyone employed in the state fish and game department, shall be evidenced by a proper voucher or receipt before they *are* approved or paid."

Section 19. Section 26-124, R.C.M. 1947, is amended to read as follows:

"26-124. **Reports of director.** The director shall before June *1* of each year, make a written report to the commission of the operation of *the* department during the year ending *the preceding* April *30.*

Section 20. Section 26-125, R.C.M. 1947, is amended to read as follows:

"26-125. **Publication of laws.** As soon as practicable after the adjournment of each session of the legislature, the *director* in co-operation with the attorney general shall make a compilation of the laws relating to fish, game, game birds, and animals in force at the date of *the* compilation, and properly index *them.* Copies of *the* compilation, sufficient in number for the purposes of this section, shall be printed in pamphlet form, pocket size. *The director shall* distribute to justices of the peace, *wardens,* and other officers and persons empowered to issue licenses for hunting, fishing, and trapping, a supply of *the* compilation sufficient to permit one copy to be given anyone desiring *a copy.* The expense incurred *in* printing *the* laws shall be paid out of fish and game *moneys in the earmarked revenue* fund."

Section 21. Section 26-133, R.C.M. 1947, is amended to read as follows:

"26-133. **Payments to counties for department owned land — exceptions.** The *director* shall, before October *15* of each year, *send* a voucher to the treasurer of each county *in which* the department owns any lands. *The* voucher shall describe the lands and state the number of acres in each parcel. *The voucher* shall authorize the drawing of a warrant to the county in a sum equal to the amount of taxes which would be payable on county assessment of *the* property were it taxable to a private citizen. *A* county treasurer receiving a

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voucher shall execute *it* and return it to the *director,* who shall approve it and transmit it to the state auditor. The state auditor shall draw a warrant in the amount shown on *the* voucher, payable to *the* county and shall *send the* warrant to the county treasurer. *The* warrant *is* payable out of any funds to the credit of the state fish and game commission. *No* voucher *or* payment *may* be made to *a* county *in which* the department owns less than one hundred (100) acres. *No* voucher *or* payment *may* be made to *a* county for lands owned by the department for game bird farm or fish hatchery purposes *or lands administered with money from the general fund.*"

Section 22. Section 26-136, R.C.M. 1947, is amended to read as follows:

"26-136. **Meat of wild animals so killed — disposition.** *The* meat of all animals killed or destroyed *pursuant to section 26-135* by the department or the authorized landholder shall be conserved and given to state institutions, school lunch programs, or *the department of social and rehabilitation services. The* department *shall* provide transportation and distribution of the meat."

Section 23. Section 26-210, R.C.M. 1947, is amended to read as follows:

"26-210. **Bounty claims for wild animals — approval and payment.** *(1)* The commission shall pay bounty claims for wild animals which have been filed *with* and approved *by* the *board of* livestock. *The* commission shall pay out of the state fish and game funds, other than those funds derived from license fees paid by hunters and fishermen, bounties on predatory wild animals, as *the* bounty claims are presented, not exceeding seven thousand five hundred dollars *($7,500)* per calendar year.

(2) The *board of* livestock shall, after *approving* the bounty claim, deliver the *claim* to the commission for rejection or approval. If *the* claim or certificate is rejected it shall be returned by the commission to the *board of* livestock. *If* approved, it shall be delivered to the *department of administration* for allowance or disallowance. *Nothing in this section takes* from the commission the exclusive power to administer *the fish and game moneys* at their discretion.

(3) If the *department of administration allows the* claim, *it must send it* to the auditor. *The* auditor must draw his warrant on the state fish and game *moneys in the earmarked revenue* fund for the amount approved in favor of the claimant, in the order in which the *claim* is approved."

Section 24. Section 26-213, R.C.M. 1947, is amended to read as follows:

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"26-213. **Carrying and exhibiting license.** It *is* unlawful and a misdemeanor punishable as provided by section 26-324 for any person to whom a license or permit has been issued to fish for or take any fish, or pursue, hunt, shoot, kill, or take any game bird or game animal or attempt to trap, or trap, or take any fur-bearing animal in this state unless at the time he *has the* license or licenses, or permit, in his possession. *It is* unlawful to refuse to exhibit *a license or permit* for inspection to *a warden* or other officer requesting to see *it.*"

Section 25. Section 26-220, R.C.M. 1947, is amended to read as follows:

"26-220. **License agents — appointment.** The *director may* appoint license agents as needed to sell state hunting and fishing licenses, according to rules *adopted by* the commission."

Section 26. Section 26-221, R.C.M. 1947, is amended to read as follows:

"26-221. **Bond of license agent — preferred claim of state for license money.** *(1) An* appointed license agent shall furnish a corporate surety bond *of* one thousand dollars *($1,000),* or in an amount equal to the value of the licenses received for distribution, *the* amount to be fixed at the discretion of the *director. The* bond shall secure the faithful performance of the duties imposed on the license agent *and* the accounting for and payment *to the state* of all moneys received from the sale of hunting and fishing licenses. *The* license agent shall properly account for all unsold licenses annually on April *1,* or at any other time at the request of the *director.*

(2) All money received for the sale of licenses at all times *belongs* to the state. *In* case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state *has* a preferred claim against the assets and estate of *a* license agent for all moneys *owed* the state."

Section 27. Section 26-222, R.C.M. 1947, is amended to read as follows:

"26-222. **Compensation — duties.** License agents, except salaried *employees of the department,* shall receive for all services rendered the sum of fifteen cents (15¢) for each license issued. On or before the 10th day of each month each license agent shall submit to the *department* all duplicates of each class of licenses sold during the preceding month and shall accompany *the* duplicate licenses with all moneys received for the sale *of the licenses,* less a fee of fifteen cents (15¢) for each license sold. Each license agent shall keep his license account open at all reasonable hours *to inspection*

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by the commission, the *director, the wardens,* or the *legislative auditor."*

Section 28. Section 26-306, R.C.M. 1947, is amended to read as follows:

"26-306. **Private artificial lake or pond — stocking — license — bond — reports — restrictions on catching fish — penalty for violation.** *(1) A* person who owns or lawfully controls an artificial lake or pond may apply to the *director* for a fish pond license. *The* holder of a private fish pond license may stock *his* fish pond with fry procured from any lawful source. *The* commission may designate the species of fish which may be released in *the* pond when there is a possibility of fish escaping from the pond into adjacent streams or lakes. *The* license holder *may* take fish from *the* lake or pond in any manner. Before *a* license holder may sell fish or eggs or fry *from the lake or pond,* he shall furnish a corporate surety bond to the state *for* five hundred dollars *($500),* conditioned to the effect that he will not sell fish or spawn from any of the public waters of this state, and also conditioned to the effect that he will report to the *director* the quantity of fish, fish eggs, and spawn taken from *the* lake or pond. *This* report *shall* be made under oath annually during the month of January. A record of all transactions must be kept showing the species and numbers or pounds of fish sold, number and species of eggs sold, number and species of fry sold, name of person or persons to whom sold, and *the* date of transaction.

(2) "Artificial lake or pond" as used *in this section does not* include *a* natural pond or body of water created by natural means, nor any portion of the stream bed or lake bed thereof. *It includes* only bodies of water created by artificial means or diversion of water *which do* not exceed five hundred *(500)* acres of surface area.

(3) A person violating *this section is* guilty of a misdemeanor and shall be punished as provided in section 26-324."

Section 29. Section 26-324, R.C.M. 1947, is amended to read as follows:

"26-324. **Penalty.** *A* person violating any state *law* pertaining to fish and game thereto, or the orders, rules, and regulations of the commission *is,* unless a different punishment is expressly provided by law for *the* violation, guilty of a misdemeanor and shall be *fined* not less than twenty-five dollars *($25)* nor more than five hundred dollars, *($500),* or *imprisoned* in the county jail for not more than six (6) months, or both *fined and imprisoned. In* addition, *the* person shall, in the discretion of the court, forfeit his license and privilege to hunt, fish, or trap within this state for a period of sixteen (16) months from the date of conviction."

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Section 30. Section 26-333, R.C.M. 1947, is amended to read as follows:

"26-333. **Record of seining licenses — refusal of license.** *The director shall* keep a record of all licenses issued by him for the use of a net for the taking of fish, showing the name of the applicant, the date of issue, the waters to be used in, and *the date of revocation if the license is* revoked. *The director shall* pay all fees received for *those* licenses into the state treasury to the credit of the fish and game *moneys in the earmarked revenue* fund. *A* license *may not* be issued to *a* person whose license has been revoked for cause."

Section 31. Section 26-345, R.C.M. 1947, is amended to read as follows:

"26-345. **Fire danger — Area closed to hunting and fishing.** When the fire danger becomes so extreme that the governor upon the advice and recommendation of the *department of natural resources and conservation* closes an area to trespass because of fire danger, that area *is* automatically closed to hunting or fishing and *remains* closed so long as the fire closure remains in effect."

Section 32. Section 26-402, R.C.M. 1947, is amended to read as follows:

"26-402. **Destruction of beaver for protection of public health.** *(1) When a* complaint is made to the *department* of health *and environmental sciences* that beaver are obstructing the free flow of a stream flowing through a settled area and into which sewage of a town or city is dumped, and the obstruction *endangers* public health the *department* of health *and environmental sciences* shall immediately investigate the complaint. *If* it finds that the work of the beavers endangers public health, it shall report the facts to the *department of* fish and game.

The commission *shall* immediately issue a permit, free of charge, to the landowner upon whose land the beaver dams are located for the removal of the beaver, the number of which shall be designated by the *warden* making the inspection. The landowner shall remove all beaver *and beaver dams* as provided by the permit, within ten *(10)* days after its issuance. *If* the landowner *refuses* to remove the beaver or the dams in the ten-day period, or if he does not desire to do so and so advises the commission, then the commission *may* remove *the* beaver by trapping or transplanting and remove their dam by blasting or other means.

(2) The commission shall furnish all labor needed to blast out or otherwise remove *the* beaver dams. Necessary explosives

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shall be furnished by the county in which the beaver dams are located."

Section 33. Section 26-501, R.C.M. 1947, is amended to read as follows:

"26-501. **Protection of wild birds other than game birds.** *A* person who *hunts, captures, kills, possesses, purchases, offers or exposes* for sale, *ships, or transports* any wild bird other than a game bird, or any part of the plumage, skin, or body of *the* bird, irrespective of whether *the* bird was captured or killed within the state, or take or destroy the nest or eggs of *a* wild bird, except under a certificate, falconer's license or permit issued by the state fish and game *director is* guilty of a misdemeanor and shall be punished as provided by section 26-324. *This* section *does* not apply to the hunting, trapping, or killing of house sparrows, crows, starlings, rock doves, blackbirds, and magpies, and other birds the fish and game commission *designates,* or the taking or destruction of their nests and eggs."

Section 34. Section 26-501.1, R.C.M. 1947, is amended to read as follows:

"26-501.1. **Protection and conservation of raptors — falconry.** (1) *"Raptors"* when used in this section *means* all birds of the orders falconiformes and strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

(2) *A* person *may not* at any time hunt, capture, kill, possess, purchase, offer or expose for sale, *or* transport *a* raptor except as provided *in this section.*

(3) The commission may *adopt* specific *rules* for the keeping of records, *and for the* trapping, taking, possession, or training of raptors used in the practice of falconry, and may authorize the issuance of licenses to persons for the practice of falconry. It *is* unlawful for a resident of *this state* to possess a raptor or to train *a* raptor in the practice of falconry *without a* license.

(4) The peregrine falcon (Falcon peregrinus), bald eagle (Haliaetus leucocephalus), golden eagle (Aquila chrysaetos), and osprey (Pandion haliaetus) may not be captured in *this* state for the sport of falconry.

(5) The fee for a falconry license is three dollars ($3) a year or any part *of a year. A license expires* April *30* each year.

(6) *A* license *may not* be issued to *a* person under the age of twelve (12) years.

(7) Species of raptors which are native to North America

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may be brought into Montana for the purpose of falconry unless *that* action is specifically prohibited by this section, the laws of other states, or the regulations of the federal government. *Those* raptors may be possessed, subject *to* this section. *A* person bringing a raptor into *this* state must be able to show proof of the area of origin.

(8) *A* licensee *may not* at any time possess more than three (3) raptors, *including* those that *have been* imported.

(9) Licensees may take raptors as young or fledglings from nest (unless specifically prohibited by commission *rules*), or by traps or nets which are humane in their operation and use. Not more than one (1) young may be taken from one (1) nest by a permittee or permittees, and at least one (1) young must be left in the nest. The commission may close an area of the state to the taking of raptors at any time or designate other raptors which may not be taken. This *subsection* does not permit the removal of raptors in any national or state refuge or park or in any area in which local laws may prohibit *that* activity. Trapping raptors is permitted only between September 1 and February 1.

(10) Raptors *may* not be used to intentially flush or harass big game.

(11) Raptors may not be loosed intentionally at protected mamals and birds. Game bird limits and all seasons and other regulations relating to game birds must be obeyed.

(12) *A* licensee *may* not transfer ownership or possession of *a* raptor taken or possessed under the provisions of *this section* without notifying the department *of fish and game* within ten (10) days after the date of transfer.

(13) Licensees shall have in possession a valid falconer's license when engaged in the practice of falconery. In addition, falconers loosing raptors at game birds or unprotected birds or mammals shall have in possession a valid hunting license.

(14) Falconry *licenses* or permits are not transferable and may be revoked for due cause at any time by the department.

(15) *A* person *may not* sell or offer for sale Montana raptors in *this* state. *A person may not* transport raptors out of the state except by permit issued by the department.

(16) *A* person who violates *this section or section* 26-501 is guilty of a misdemeanor and shall be *prosecuted under* section 26-324.

(17) Predatory hawks and owls destroying livestock or poultry may be killed at any time by *the* livestock or poultry owners. Eagles may be killed in compliance with federal law and regulation."

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Section 35. Section 26-506, R.C.M. 1947, is amended to read as follows:

"26-506. **Sale of confiscated birds and animals.** All birds, animals, fish, heads, hides, teeth, or other parts of any animal seized by any officer *or warden* shall be sold, under the direction of the *director* or *wardens,* at a time, place, and manner so as to receive the highest price. *The sale* shall be at public auction to the highest and best bidder. *The director* or his *wardens* shall *publish* notice of the time and place of *the* sale, together with a description of the birds, fish, animals, or parts or portions of animals to be sold, in a newspaper of general circulation published in the county where *the* sale is to be held. *The notice shall be published at least once,* and the sale shall not be less than five (5) nor more than thirty (30) days after the last publication. *If* the property seized is perishable, *it* may be sold by *those* officers without publishing notice *of the sale. The property may be sold* upon *that* public notice, and under *those* terms and conditions *which* in the discretion of the officers seem conducive to *securing* full value."

Section 36. Section 26-509, R.C.M. 1947, is amended to read as follows:

"26-509. **Record of confiscated property.** *The director and wardens shall keep a* complete record of all property confiscated because of a violation of the game and fish laws, showing in detail a description of the property, the person from whom it was confiscated, the price received *for it* upon public sale, and the disposition of the money."

Section 37. Section 26-908, R.C.M. 1947, is amended to read as follows:

"26-908. **Outfitters and guides law—definitions.** As used in this act, unless the context *requires* otherwise: (1) "Outfitter" *has the definition given it* in section 26-904.

(2) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment.

(3) "Resident guide" means *a* resident who guides resident or nonresident friends for the purpose of hunting game animals without compensation.

(4) "Advisory council" means the Montana *outfitters' council provided for in section 82A-2005.*

(5) "Resident" means *a* person who qualifies for a resident Montana hunting or fishing license under section 26-202.3.

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(6) "Nonresident" means *a* person other than a resident.

(7) "License year" means that period commencing May 1 and ending April 30 of the next year.

Section 38. Section 26-911, R.C.M. 1947, is amended to read as follows:

"26-911. **Powers and duties of** *department.* The *department* shall:

(1) Prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. *This* pamphlet shall be available for free distribution as early as possible during each calendar year, but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current year. The costs of publication of *the* pamphlet shall be paid from the *earmarked revenue fund, fish* and game *account;*

(2) Cooperate with the federal government through its appropriate agencies or instrumentalities in matters of mutual concern regarding the business of outfitting and guiding in Montana*;*

(3) Establish a minimum of two (2) meetings annually with the advisory council*;*

(4) Consult with the advisory council to develop policy concerning the administration of outfitting and to transmit the council recommendations to the commission.

(5) Designate a warden or ex officio warden with no conflict of interest whose primary duties are to administer outfitting and guiding laws and regulations."

Section 39. Section 26-912, R.C.M. 1947, is amended to read as follows:

"26-912. **Outfitters' council—powers and duties.** The council shall *have the authority and duty to* make recommendations to the commission and the director as to:

(1) Outfitter standards*;*

(2) Rules *of procedures and regulations to effectuate* this act, including but not limited to *rules* prescribing all requisite qualifications for license. *These qualifications shall include* training, experience, knowledge of rules *and regulations of governmental bodies* pertaining to outfitting, and condition and type of gear and equipment;

(3) Hearings and proceedings to suspend or revoke licenses

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of outfitters *and* guides *and to recommend suspension or revocation of licenses for due cause;*

(4) Any reasonable rules, *and regulations* not in conflict with this act, *necessary for* safeguarding the health, safety, and welfare of those persons utilizing the services of outfitters and for the protection of landowners and the general public."

Section 40. Section 26-921, R.C.M. 1947, is amended to read as follows:

"26-921. *Enforcement.* The *warden or ex officio warden, designated by the department to primarily administer outfitting and guiding laws and regulations, and other wardens and all peace officers shall* enforce this act."

Section 41. Section 26-1001, R.C.M. 1947, is amended to read as follows:

"26-1001. **Disposition of fines, bond and penalties—serving out fines and costs.** All fines, bonds, and penalties mentioned in this *title* may be collected by civil action in the name of the state in any court of competent jurisdiction. All fines, bonds, and costs shall be collected without stay of execution."

Section 42. Section 26-1002, R.C.M. 1947, is amended to read as follows:

"26-1002. **Payment of cost bill to county wherein costs were incurred.** *In* a prosecution for the violation of fish and game laws *where* costs *are* incurred, a cost bill shall be prepared. *The cost bill shall include* the cost of board of prisoners and *shall be* presented to the *department of administration. If the costs are* allowed, the state treasurer shall pay *them,* out of the *fish and game moneys in the earmarked revenue fund,* to the treasurer of the county *where the* costs were incurred."

Section 43. Section 26-1008, R.C.M. 1947, is amended to read as follows:

"26-1008. **Permit for taking fish or game for scientific purposes.** It *is* lawful for the duly accredited representative of *an accredited* school, college, university, or other institution of learning, *or of any governmental agency,* who may be investigating a scientific subject making *it* necessary, to take, kill, capture, and *possess* for *that* purpose any birds, fish, or animals *protected by Montana law or state fish and game regulation. He may* take, kill, and capture *protected or unprotected birds, fish or animals* in any way, except by the explosion of dynamite. *No* more of *the* birds, fish, or animals *may* be taken than are necessary for *the* investigation. *A* person who *desires* to engage in *the* scientific investigation shall apply to the

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director for a *permit. The director may set qualifications for persons to whom permits are issued and may place special authorizations or special requirements and limitations on any permit.* If the *director* is satisfied of the good faith of the applicant, he shall issue a *permit,* which shall place a time limit *on the collections and may* place a restriction *on* the number of birds, fish or animals to be taken, *and shall require a report of the numbers and species of animals taken by collection areas. The permittee* shall pay five dollars *($5) for the permit. The permittee may not* take, have, or capture any other or greater number of birds, fish, or animals than are mentioned in *the* permit. *Any representative of an accredited school, college, university, or other institution of learning who may have various students or associates assisting him throughout the year may apply to have his permit issued to himself and his associates. The associates, when carrying a copy of the permit, shall have the same authorizations and restrictions as the original applicant. The original applicant shall keep a record of all associates to whom he issued a copy of his permit and of the times for which each associate is issued a copy. The original applicant is responsible for his associates' use of the permit or copies of the permit, including their reports of species and numbers of animals collected. A* person violating this section *is* guilty of a misdemeanor, punishable as provided by section 26-324."

Section 44. Section 26-1101, R.C.M. 1947, is amended to read as follows:

"26-1101. **Creation of game preserves—provisions thereof—penalties for violation of provisions.** *(1)* There are, for the better protection of all the game animals and birds within *their* limits, game preserves within the state. *Except* as provided *in this section,* no person *may* within the limits of *a* game preserve created by the legislature or by the fish and game commission, hunt for, trap, capture, kill, or take game animals, fur-bearing animals or birds of any kind. *Within* the limits of *a* preserve, *a person may not* carry or discharge firearms, create any unusual disturbance tending to frighten or drive away any of the game animals or birds, or chase *them* with dogs. *The* commission may declare any preserve open to the trapping of fur-bearing animals during the regular open season.

(2) Permits to capture animals or birds for the purpose of propagation or for scientific purposes, to trap fur-bearing animals, to destroy mountain lions, wolves, foxes, coyotes, wildcats, lynx, or other predatory animals or birds, or for carrying firearms may be issued by the *director,* upon the payment of *the* fee and in accordance with *rules* established for *the* preserve by the commission. *A* person violating this section or any other law relating to game preserves, *is* guilty of a misdemeanor and shall be *punished* as provided by section 26-324."

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Section 45. Section 26-1205, R.C.M. 1947, is amended to read as follows:

"26-1205. **Regulation of roadside menageries or zoos—definitions.** As used in *sections 26-1205 through 26-1212,* unless the context *requires* otherwise:

(1) "Roadside menagerie or zoo" means any place where one (1) or more wild animals, including birds, reptiles, and the like are kept in captivity, for the evident purpose of exhibition or attracting trade. *It* does not include the exhibition of any animal by *an* educational institution or in *a* zoological garden chartered as a nonprofit corporation by the state *and does not include* animals exhibited by any traveling theatrical exhibition or circus.

(2) "Wild animal" means *an* animal wild by nature as distinguished from the common domestic animals, whether *the* animal was bred or reared in captivity, and includes birds and reptiles."

Section 46. Section 26-1212, R.C.M. 1947, is amended to read as follows:

"26-1212. **Disposal of fines, bonds or penalties—fees.** Fines, bonds, or penalties shall be administered and disposed of in accordance with the provisions of section *26-121.* Fees obtained under *sections 26-1205 through 26-1212* shall be deposited with the state treasurer and credited to the earmarked revenue fund, fish and game account."

Section 47. Section 26-1302, R.C.M. 1947, is amended to read as follows:

"26-1302. **Records to be kept by fur dealers—inspection.** *(1) A* fur dealer shall keep a book in which shall be recorded separately on the date of each transaction the following facts:

(a) The number and kind of all skins or pelts purchased or sold by *the* fur dealer;

(b) The place where *the* skins or furs were killed or trapped and a separate record of all *the* skins or pelts as were killed or trapped outside *this* state;

(c) The trapping license number under which *the* furs or pelts were taken in cases where a trapper's license is required;

(d) The names and addresses of the persons to whom *the* skins or pelts were sold or from whom they were purchased.

(2) This book shall be open at all reasonable times to the inspection of the state fish and game *director* or any *warden,* or any United

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States game warden, and shall be preserved and accessible for one year after the expiration of any license granted to *the* fur dealer."

Section 48. Section 26-1303, R.C.M. 1947, is amended to read as follows:

"26-1303. **Persons required to procure fur dealer's license.** *A* fur *dealer* shall, before buying, selling, or in any manner dealing in the skins or pelts of any fur-bearing or predatory animal within *this* state secure a fur dealer's license from the *director. No* license *is* required for a hunter or trapper selling skins or pelts which he has lawfully taken, nor for *a* person not a fur dealer who purchases skins or pelts exclusively for his own use and not for sale."

Section 49. Section 62-304, R.C.M. 1947, is amended to read as follows:

"62-304. **Powers and duties.** The commission *shall* make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state, and *may* by purchase, lease, agreement, acceptance of donations, or condemnation acquire for the state any areas, sites, or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The commission *may* in its discretion accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. *It may in its* discretion accept gifts, grants, bequests, or contributions of money or other property to be *spent* or used for any of the purposes of *sections 62-301 through 62-308. A* contract *may not* be entered into or other obligation incurred until **moneys have been appropriated by the legislature or are otherwise** available. The commission also *has* jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the *department of highways* and contiguous to the state highway system. The commission *may* designate lands under its control as state parks, state historical sites, state monuments, or by *any* other designation it *considers* appropriate, *remove or change the designation of* any area or portion, and name or change the name of any area as designated. *The commission may* lease *those* portions of designated lands *which are* necessary for the proper administration of these lands in keeping with the basic purpose of *sections 62-301 through 62-308."*

Section 50. Section 62-307, R.C.M. 1947, is amended to read as follows:

"62-307. **Connecting roads.** The *department of highways may* construct, improve, and maintain with state highway funds connect-

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ing roads between existing state highways and state parks. *Each* road shall not exceed a total length of ten (10) miles."

Section 51. Section 69-3504, R.C.M. 1947, is amended to read as follows:

"69-3504. **Identification number.** (a) The owner of each motorboat or vessel requiring numbering by this state shall file an application for number, accompanied by a certificate of tax of personal property showing payment of tax on the motorboat or vessel for the current year, with the *department of revenue* or its designated representative, on forms approved by the board. The application shall be signed by the owner of the motorboat or vessel, and shall be accompanied by a fee of one ($1) dollar. Upon receipt of the application in approved form and certificate hereinabove referred to, the board shall enter the same upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat or vessel and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat or vessel, the identification number in *a* manner as may be prescribed by rules of the board, in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat or vessel for which issued, whenever *the* motorboat or vessel is in operation.

(b) The numbering requirements of this act shall apply to motorboats or vessels operated by manufacturers or dealers except that the description of the motorboat or vessel shall be omitted from the certificate of number and such number shall be permitted to be transferred from one vessel to another. *Instead* of the descriptive material on *the* certificate of number the word "manufacturer" or "dealer" as appropriate, will appear on *the* certificate. The manufacturer or dealer may have the number awarded printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to a vessel to be demonstrated or tested so long as the number is exhibited so as to in all other respects meet the requirements of act relating to display of numbers.

(c) The owner of any motorboat or vessel already covered by a number in full force and effect, which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state, shall record the number prior to operating the motorboat or vessel on the waters of this state in excess of the ninety-day reciprocity period provided for in section 69-3506(1). Such recordation shall be in the manner and pursuant to the procedure required for the award of number under subsection

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(a) of this section, except that no additional or substitute number shall be issued.

(d) Should the ownership of a motorboat or vessel change, a new application form with fee shall be filed with the board and a new certificate of number shall be awarded in the same manner as provided for in an original award of number, provided further that the number assigned may be determined by the board.

(e) *If* an agency of the United States government *has* in force an over-all system of identification numbering for motorboats or vessels *in* the United States, the numbering system employed pursuant to this act by the board shall be in conformity therewith.

(f) The board may award any certificate of number directly or may authorize any person to act as agent for the awarding thereof. *If* a person accepts *the* authorization, he may be assigned a block of numbers and certificates therefor which upon award, in conformity with this act and with any rules of the board shall be valid as if awarded directly by the board.

(g) All records of the board made or kept *under* this act shall be public records. *The* board shall submit to the *department of law enforcement and public safety,* correct copies of all certificates of registration issued *under* this act; and *the department of law enforcement and public safety* shall make *these* records immediately available to all law enforcement offices of this state.

(h) Every certificate of number awarded *under* this act shall continue in effect for a period not to exceed one (1) year, and shall be renewed annually unless sooner terminated or discontinued in accordance with the provisions of this act. Certificates of number may be renewed by the owner in the same manner provided for in the initial securing of the *certificate.* The board shall notify each owner of a registered vessel of expiration of registration a reasonable time prior to expiration of registration.

(i) The board shall fix a day and month of the year on which certificates of number due to expire during the calendar year shall lapse and no longer be of any effect unless renewed *under* this act.

(j) In event of transfer of ownership, the purchaser shall furnish the board notice of the acquisition of all or any part of his interest other than the creation of a security interest in a motorboat or vessel numbered in this state *under* subsections (a) and (b) of this section, or of the destruction or abandonment of *the* motorboat or vessel, within reasonable time thereof. Such transfer, destruction or abandonment shall terminate the certificate of number for *the* motorboat or vessel except that in the case of a transfer

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of a part interest which does not affect the owner's right to operate *the* motorboat or vessel, *the* transfer *does* not terminate the certificate of number.

(k) *A* holder of a certificate of number shall notify the board within reasonable time if his address no longer conforms to the address appearing on the certificate and shall, as a part of *the* notification, furnish the board with his new address. The board may provide in its rules for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(l) No number other than the number awarded to a motorboat or vessel or granted reciprocity *under* this act, shall be painted, attached or otherwise displayed on either side of the bow of *the* motorboat or vessel.

(m) Fees collected under this section shall be transmitted to the state treasurer who shall deposit the fees in the motorboat certificate identification account of an earmarked revenue fund. These fees shall be used only for the administration and enforcement of sections 69-3501 through 69-3500.1 and 69-3508.2 through 69-3518."

Section 52. Section 69-3505, R.C.M. 1947, in amended to read as follows:

"69-3505. **Equipment.** (1) Every vessel shall have aboard:

(a) One life preserver, buoyant vest, ring buoy or buoyant cushion of the type approved by the commandant of the United States coast guard in good and serviceable condition for each person on board. *In* boats under twenty-six (26) feet in length, *in which a* person *under the age of thirteen (13) years is in, while the vessel* is in motion, *that person* shall have a life preserver of a type approved by the commandant of the United States coast guard securely fastened to his person.

(b) When in operation during hours of darkness, a light sufficient to make the motorboat's or vessel's presence and location known to all other vessels within a reasonable distance.

(c) If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not an entirely open motorboat or vessel, an efficient natural or mechanical ventilation system which shall be capable of removing resulting gases prior to, and during the time *the* motorboat or vessel is occupied by *a* person.

(d) All motorboats shall carry the minimum number of coast guard approved hand portable fire extinguishers, the number of

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which is to be determined by the Montana fish and game commission or a coast guard approved fixed fire extinguishing system, except, that motorboats less than twenty-six (26) feet in length of open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.

(2) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) The board *may adopt* rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or with the navigation rules promulgated by the United States coast guard.

(4) A person *may not* operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

(5) A vessel *may not* be equipped in a manner which will permit discharge of inadequately treated sewage into waters of this state. No container of inadequately treated sewage *may* be placed, left or discharged in or near waters of this state by anyone at any time. All toilets located on any vessel operated on waters of this state shall have securely affixed to the interior discharge opening of them an operating treatment device or retaining tank meeting the standards established by the board of health *and environmental sciences."*

Section 53. Section 69-6602, R.C.M. 1947, is amended to read as follows:

"69-6602. **Definitions.** As used in this act:

(1) "Department" means the department of administration provided for in title 82A, chapter 2.

(2) "Industry" means the passenger tramway business activities of all those persons in the state who own, manage, or direct the operation of passenger tramways.

(3) "Operator" means a person, including any political subdivision or instrumentality thereof, who owns, manages or directs the operation of a passenger tramway.

(4) "Area" means the area, terrain or ski slopes served by a passenger tramway.

(5) "Passenger tramway" *means* a device used to transport passengers by means of any of the following:

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(a) Two-car aerial passenger tramway, a device used to transport passengers in two open or enclosed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar devices;

(b) Multi-car aerial passenger tramway, a device used to transport passengers in several open or enclosed cars or carrying device attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar devices;

(c) Skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable, or similar devices;

(d) Chair lift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain or link belt supported by trestles or towers with one or more spans, or similar devices;

(e) J bar, T bar or platter pull, so-called, and similar types of devices or means of transportation which pull skiers riding on skies by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

(f) Rope tow, a type of transportation which pulls the skiers, riding on skis as the skier grasps the rope or wire rope manually, or similar devices.''

Section 54. There is a new section numbered 82A-2001.1, R.C.M. 1947, which reads as follows:

82A-2001.1. **Functions of department.** The department and its units are responsible for administering laws pertaining to fish and game, including, but not limited to:

(1) Fish, game, and outfitters (title 26);

(2) State parks (title 62, chapter 3);

(3) Outdoor recreational resources (title 62, chapter 4);

(4) Motorboat and vessel regulations (title 69, chapter 35).

Section 55. Section 82A-2003, R.C.M. 1947, is amended to read as follows:

"82A-2003. **Director of fish and game department.** *(1) There is a* director *of fish and game who* shall be appointed by the governor in the manner set forth in section 82A-106, except that the director shall serve a term concurrent with the governor's term, and the director may be removed from office by the governor only for

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neglect of duty, incompetency, or other good cause, and after a full hearing on verified charges. *The charges shall be* filed, *and a copy served on the director,* at least twenty (20) days before *the* hearing.

(2) The director shall have experience, special training, and skill in wildlife protection, conservation and management.

(3) The director is not a department head for purposes of section 82A-107."

Section 56. Section 82A-2004, R.C.M. 1947, is amended to read as follows:

"82A-2004. **State fish and game commission**—*composition—qualifications*—**designation.** (1) *There is a* state fish and game commission.

(2) The commission consists of five (5) members. At least one member shall be experienced in the breeding and management of domestic livestock. The governor shall appoint one (1) member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweetgrass counties;

(c) District No. 3, consisitng of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie counties.

(3) Appointments shall be made without regard to political affiliation and shall be made solely for the welfare of the fish, game, and wildlife of this state. A person may not be appointed to the commission unless he is informed or interested and experienced in the subject of wildlife, fish and game, and the requirements for the conservation and protection of fish, game, and game birds and animals.

(4) A vacancy occuring on the commission shall be filled by the governor with the consent of the senate in the same manner and from the district in which the vacancy occurs.

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(5) The state fish and game commission is designated as a quasi-judicial board for purposes of section 82A-112 of this act."

Section 57. There is a new section numbered 82A-2005, R.C.M. 1947, which reads as follows:

82A-2005. **Montana outfitters' council—composition—qualifications—terms—allocation.** (1) There is a Montana outfitters' council.

(2) The council consists of seven (7) members. Each member shall be a licensed outfitter and shall represent one (1) of the seven (7) fish and game administrative districts. A member shall be selected by the licensed outfitters residing in that district by election at an annual meeting of the outfitters to be held in the district headquarters at 1:00 p.m. on the second Friday of March. A majority vote of all the outfitters in attendance at the meeting shall determine the member from the district. At the election an alternate member shall also be elected to servie if the first elected member is unable to act.

(3) The members shall serve staggered three (3) year terms and take office on the day they are elected.

(4) The council is allocated to the department.

(5) The council is not subject to the provisions of section 82A-110.

(a) Wherever the words "Montana aerial tramway safety board," "passenger tramway safety board," or "board" appear in sections 69-6601, 69-6605, 69-6606, 69-6607, 69-6608, 69-6609, 69-6610, 69-6611, 69-6612, 69-6613, 69-6614, the word "department" is substituted therefor.

Section 58. Sections 26-101, 26-102, 26-104.2, 26-105, 26-105.1, 26-106.1, 26-106.2, 26-116, 26-120, 26-209, 26-224, 26-905, 26-910, 62-309, 62-404, 69-6603, 69-6604, 82A-217, 82A-2002, R.C.M. 1947, are repealed.

Approved: April 4, 1973.

CHAPTER NO. 512

An Act to Provide That Agricultural Land Shall Be Classified, Appraised, and Assessed According to its Value For Agricultural Purposes without Regard to the Value it May Have For Other Purposes; and Defining Agricultural Lands, Establishing Procedure and Providing a Penalty; Amending Sections 84-401 and 84-429.12, R.C.M. 1947.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Since the market value of many farm properties is based upon speculative purchases which do not reflect the productive capability of farms, it is the legislative intent that bona fide farm properties shall be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

Section 2. Section 84-401, R.C.M. 1947, is amended to read as follows:

"84-401. **Property assessed at cash value.** All taxable property must be assessed at its full cash value *except the assessment of agricultural lands shall be based upon the productive capacity of the lands when valued for agricultural purposes and shall be so valued unless a different use is demonstrated.* Land and the improvements thereon must be separately assessed."

Section 3. Section 84-429.12, R.C.M. 1947, is amended to read as follows:

"84-429.12. **Classification and appraisal—general and uniform methods.** It is hereby made the duty of the state *department of revenue* to implement the provisions of this act by providing:

1. For a general and uniform method of classifying lands in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes.

All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information. All lands must be classified by forty (40) acre tracts or fractional lots.

All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

2. For a general and uniform method of appraising city and town lots.

3. For a general and uniform method of appraising rural and urban improvements.

4. For a general and uniform method of appraising timberlands."

Section 4. Land which is actively devoted to agricultural use

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shall be eligible for valuation, assessment and taxation as herein provided each year it meets the following qualifications:

(1) It is being actively devoted to agriculture;

(2) The area of such land is not less than five (5) contiguous acres when measured in accordance with the provisions of section 8, when the gross value of grazing and field crops produced thereon together with any payments received under a crop-land retirement program totals at least one thousand ($1,000) per year; or

(3) It agriculturally produces the equivalent of fifteen percent (15%) or more of the owners annual gross income; and

(4) (a) Application by the owner of the land for valuation hereunder is submitted on or before October 1 of the year immediately preceding the tax year to the county assessor in which such land is situated on the form prescribed by the state department of revenue. The county assessor shall continue to accept applications filed within sixty (60) days after October 1 upon payment of a late filing fee in the amount of twenty-five dollars ($25), which shall be paid to the county treasurer.

(b) The county assessor shall have all applications filed under subsection (a) recorded by the county recorder. Whenever land which is or has been in agricultural use and is or has been valued, assessed and taxed under the provisions of this act is applied to a use other than agricultural, the owner shall notify the county assessor and the county assessor shall cause the following statement to be recorded by the county recorder: "On the ..... day of ....., 19....., this land became subject to the roll-back tax imposed by section 6."

(c) Whenever the owner of land which has been in agricultural use and has been valued, assessed and taxed under the provisions of this act does not file an application as provided in subsection (a), then the department of revenue or its agent shall revalue the land as non-agricultural land.

Section 5. In classifying land which qualifies as land actively devoted to agricultural use under the test prescribed by this act, and as to which the owner thereof has made timely application for valuation, assessment and taxation hereunder for the tax year in issue, the department of revenue, shall consider only those indicia of value which such land has for agricultural use.

Section 6. When land which is or has been in agricultural use and is or has been valued, assessed and taxed under the provisions of this act, is applied to a use other than agricultural, it shall be subject to an additional tax hereinafter referred to as the

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"roll-back tax," which tax shall be a lien upon the land and become due and payable at the time of the change in use.

As used in this act, the word "roll-back" means the period preceding the change in use of the land not to exceed four (4) years during which the land was valued, assessed and taxed under the provisions of this act.

The assessor shall ascertain the following in determining the amount of the roll-back tax chargeable on land which has undergone a change in use:

(1) the full and fair value of the land as determined by the department of revenue under the valuation standard applicable to land in the county not valued, assessed and taxed under the provisions of this act;

(2) the amount of the land assessment as unsubdivided and unimproved land for the period of the roll-back, by multiplying such full and fair market value by the number of years included in the roll-back and by multiplying the product obtained, by the assessment ratio in effect in the year in which the change in use of the land is made as determined by the state;

(3) the average mill levy applied in the taxing district in which the land is located by dividing the aggregate mill levy actually applied in each respective year of the roll-back by the number of years, included in the roll-back; and

(4) the amount of the roll-back tax by multiplying the taxable value computed from the amount of the assessment determined under subsection (2) hereof by the average mill levy determined under subsection (3) hereof, less the amount of real property taxes actually paid during the period of the roll-back.

Section 7. The assessment of the roll-back tax imposed by section 5, the attachment of the lien for such taxes, and the right of the owner or other interested party to review any judgment of the department of revenue or local tax appeal board affecting such roll-back tax, shall be governed by the procedures provided for the assessment and taxation of real property not valued, assessed and taxed under the provisions of this act. The roll-back tax collected shall be paid into the county treasury and paid by the treasurer to the various taxing units pro-rata in accordance with the levies for the current year.

Section 8. In determining the total area of land actively devoted to agricultural use there shall be included the area of all land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, irrigation ditches and like

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facilities, but land under and such additional land as may be actually used in connection with the farm house shall be excluded in determining such total area.

Section 9. Application for valuation, assessment and taxation of land in agricultural use under this act shall be on a form prescribed by the state department of revenue, and provided for the use of the applicants by the county assessor. The form of application shall provide for the reporting of information pertinent to the provisions of this act. A certification by the land owner that the facts set forth in the application are true may be prescribed by the state department of revenue to be in lieu of a sworn statement to that effect. Statements so certified shall be considered as if made under oath and subject to the same penalties as provided by law for perjury.

Section 10. Continuance of valuation, assessment and taxation under this act shall depend upon continuance of the land in agricultural use and compliance with the other requirements of this act and not upon continuance in the same owner of title to the land. Liability to the roll-back tax shall attach when a change in use of the land occurs but not when a change in ownership of the title takes place if the new owner continues the land in agricultural use, under the conditions prescribed in this act.

Section 11. Separation or split off of a part of the land which is being valued, assessed and taxed under this act, either by conveyance or other actions of the owner of such land, for a use other than agricultural, shall subject the land so separated to liability for the roll-back tax applicable thereto, but shall not impair the right of the remaining land to continuance of valuation, assessment and taxation hereunder, provided it meets the minimum requirements of this act.

Section 12. The taking of land which is being valued, assessed and taxed under this act by right of eminent domain shall not subject the land so taken to the roll-back tax herein imposed.

Section 13. Where contiguous land in agricultural use in one ownership is located in more than one (1) county, compliance with the minimum requirements shall be determined on the basis of the total area and value of farm crops on such land and not the area or value of farm crops on land which is located in the particular county.

Section 14. The factual details to be shown on the assessor's tax list and duplicate with respect to land which is being valued, assessed and taxed under this act shall be the same as those set

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forth by the assessor with respect to other taxable property in the county.

Section 15. The state department of revenue is empowered to promulgate such rules and regulations and to prescribe such forms as it shall deem necessary to effectuate the purposes of this act.

Section 16. Any person who violates any provision of this act shall be guilty of a misdemeanor.

Approved: April 4, 1973.

CHAPTER NO. 513

An Act Creating a Montana Criminal Code, to Codify and Generally Revise the Statutes Concerning Criminal Offenses; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is hereby created the Montana Criminal Code which is title 94, R.C.M. 1947, and reads as follows:

CHAPTER 1: GENERAL PRELIMINARY PROVISIONS.

94-1-101. **Short Title.** This act shall be known and may be cited as the "Criminal Code of 1973."

94-1-102. **General Purposes And Principles Of Construction.**

(1) The general purposes of the provisions governing the definition of offenses are:

(a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individual or public interests;

(b) to safeguard conduct that is without fault from condemnation as criminal;

(c) to give fair warning of the nature of the conduct declared to constitute an offense;

(d) to differentiate on reasonable grounds between serious and minor offenses.

(2) The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

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94-1-103. **Application To Offenses Committed Before And After Enactment.**

(1) The provisions of this code shall apply to any offense defined in this code and committed after the effective date thereof.

(2) Unless otherwise expressly provided, or unless the context otherwise requires, the provisions of this code shall govern the construction of and punishment for any offense defined outside of this code and committed after the effective date thereof, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of this code do not apply to any offense defined outside of this code and committed before the effective date thereof. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this code had not been enacted.

94-1-104. **Other Limitations On Applicability.**

(1) This code does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered and the civil injury is not merged into the offense.

(2) No conduct constitutes an offense unless it is described as an offense in this code or in another statute of this state. However, this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment or decree.

94-1-105. **Classification Of Offenses.**

(1) For the determination of the court's jurisdiction at the commencement of the action and for the determination of the commencement of the period of limitations, the offense shall be designated a felony or misdemeanor based upon the maximum potential sentence which could be imposed by statute.

(2) An offense defined by any statute of this state other than this code shall be classified as provided in this section and the sentence that may be imposed upon conviction thereof shall be governed by this code.

94-1-106. **General Time Limitations.**

(1) A prosecution for criminal homicide may be commenced at any time.

(2) Except as otherwise provided in this code, prosecutions

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for other offenses are subject to the following periods of limitations:

(a) a prosecution for any felony must be commenced within five (5) years after it is committed;

(b) a prosecution for a misdemeanor must be commenced within one (1) year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) If the aggrieved person is a minor or competent, then during the minority or incompetency or within one (1) year after the termination thereof.

(b) In any other instance, within one (1) year after the discovery of the offense by the aggrieved person, or by a person who has legal capacity to represent an aggrieved person, or has a legal duty to report the offense, and is not himself a party to the offense; or in the absense of such discovery, within one (1) year after the prosecuting officer becomes aware of the offense.

(4) An offense is committed either when every element occurs, or when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(5) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

94-1-107. **Periods Excluded From Limitation.**

The period of limitation does not run:

(1) during any period in which the offender is not usually and publicly resident within this state or is beyond the jurisdiction of this state; or

(2) during any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or

(3) during a prosecution pending against the offender for the same conduct, even if the indictment, complaint or information which commences the prosecution is dismissed.

CHAPTER 2: GENERAL PRINCIPALS OF LIABILITY.

94-2-101. **General Definitions.**

Unless otherwise specified in the statute all words will be taken in the objective standard rather than in the subjective.

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(1) "Acts" has its usual and ordinary grammatical meaning and includes any bodily movement, any form of communication, and, where relevant, includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the offender.

(3) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which a law or a regulation is particularized in its application to an individual.

(4) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness or any impairment of physical condition and includes mental illness or impairment.

(6) "Co-habit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective, or by a common purpose or plan and which resulted in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts, and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true; or

(b) fail to correct a false impression which the offender previously has created or confirmed; or

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(c) prevent another from acquiring information pertinent to the disposition of the property involved; or

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(12) "Defamatory matter" means anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation.

(13) "Deprive" means to withhold property of another:

(a) permanently; or

(b) for such a period as to appropriate a portion of its value; or

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(14) "Deviate sexual relations" means sexual contact or sexual intercourse between two (2) persons of the same sex, or any form of sexual intercourse with an animal.

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one (1) year.

(16) "A frisk" is a search by an external patting of a person's clothing.

(17) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(18) "Government" includes any branch, subdivision or agency of the government of the state or any locality within it.

(19) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any person or entity in whose welfare he is interested.

(20) "He, she, it". The singular term shall include the

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plural and the masculine gender the feminine except where a particular context clearly requires a different meaning.

(21) "A house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one (1) person under the control, management or supervision of another.

(22) "Human being" means a person who has been born and is alive.

(23) "An illegal article" is an article or thing which is prohibited by statute, rule regulation or order from being in the possession of a person subject to official detention.

(24) "Inmate"" means a person who engages in prostitution in or through the agency of a house of prostitution.

(25) "Intoxicating substance" means any substance having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability including but not limited to any beverage containing one-half of one per centum (½ of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum (½ of 1%) of alcohol by volume.

(26) "An involuntary act" means any act which is:

(a) a reflex or convulsion; or

(b) a bodily movement during unconsciousness or sleep, or

(c) conduct during hypnosis or resulting from hynotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(27) "Juror" means any person who is a member of any jury, including a grand jury, impanedel by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term also includes a person who has been drawn or summoned to attend as a prospective juror.

(28) "Knowingly"—A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. When knowledge of the existence of a particular

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fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(29) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(30) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as result of the influence of an intoxicating substance.

(31) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less.

(32) "Negligently"—A person act negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists; or if he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. Gross deviation means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(33) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(34) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of property.

(35) "Occupied structure" means any building, vehicle or other place suited for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two (2) or more units separately secured or occupied is a separate occupied structure.

(36) "Offender" means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.

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(37) "Offense" means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors.

(38) "Offical detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(39) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with such proceeding.

(40) "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(41) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession in unlawful, and without whose consent the offender has no authority to exert control over the property.

(42) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility.

(43) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(44) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(45) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

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(46) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(47) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(48) "Premises" includes any type of structure or building and any real property.

(49) "Property" means anything of value. Property includes, but is not limited to, real estate, money, commercial instruments, admission or transportation tickets, written instruments representing or embodying rights concerning anything of value, labor, or services, or otherwise of value to the owner; things growing on or affixed to, or found on land, or part of or affixed to any building; electricity, gas and water; birds, animals and fish, which ordinarily are kept in a state of confinement; food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes or models thereof, or any other articles, materials, devices, substances and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence reflect or record secret scientific, technical, merchandising production or management information, designed process, procedure, formula, invention or improvement.

(50) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has not authority to defeat or impair, even though the offender himself may have an interest in the property.

(51) "Public place" means any place to which the public or any substantial group thereof has access.

(52) "Public servant" means any officer or employee of government, including but not limited to, legislators, judges, and firemen, and any person participating as a juror, advisor, consultant, administrator, executor, guardian or court appointed fiduciary; but the term does not include witnesses. The term public servant includes one who has been elected or designated to become a public servant.

(53) "Purposely"—A person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be pre-

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vented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(54) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfiguration, or protracted loss or impairment of the function or process of any bodily member or organ and includes serious mental illness or impairment.

(55) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(56) "Sexual intercourse" means penetration of the vulva, anus or mouth of one person by the penis of another person, or penetration of the vulva or anus of one person by any body member of another person or penetration of the vulva, or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(57) "Solicit" or solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(58) "State" or "this state" means the state of Montana, and all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(59) "Statute" means any act of the legislature of this state.

(60) "Stolen property" means property over which control has been obtained by theft.

(61) "A stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(62) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(63) "Threat" means a menace, however communicated to:

(a) inflict physical harm on the person threatened or any other person or on property; or

(b) subject any person to physical confinement or restraint; or

(c) commit any criminal offense; or

(d) accuse any person of criminal offense; or

(e) expose any person to hatred, contempt or ridicule; or

(f) harm the credit or business repute of any person; or

(g) reveal any information sought to be concealed by the person threatened; or

(h) take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(64) (a) "Value" means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation shall be deemed the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than one hundred fifty dollars ($150) by the standards set forth in subsection (64) (a) above, its value shall be deemed to be an amount less than one hundred fifty dollars ($150).

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(65) "Vehicle" means any device for transportation by land, water or air, or mobile equipment with provision for transport of an operator.

(66) "Weapon" means any instrument, article or substance

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which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(67) "Witness" means a person whose testimony is desired in any proceeding or in any investigation by a grand jury or in a criminal action, prosecution or proceeding.

(68) "Without consent" means:

(a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping, to be inflicted on anyone; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated; or

(ii) physically helpless; or

(iii) less than sixteen (16) years old.

94-2-102. **Voluntary Act.**

A material element of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes on the offender and which he is physically capable of performing. Possession is a voluntary act if the offender knowingly procured or received the thing possessed, or was aware of his control thereof for a sufficient time to have been able to terminate his control.

94-2-103. **General Requirements Of Criminal Act And Mental State.**

(1) A person is not guilty of an offense, other than an offense which involves absolute liability unless, with respect to each element described by the statute defining the offense, he acts while having one (1) of the mental states described in sections 94-2-101 (28), 94-2-101 (32) and 94-2-101 (53).

(2) If the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element.

(3) Knowledge that certain conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of the offense unless the statute clearly defines it as such.

(4) A person's reasonable belief that his conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order which is not known to him and has not been published or

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otherwise made reasonably available to him, and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him; or

(b) he acts in reliance upon a statute which later is determined to be invalid; or

(c) he acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) he acts in reliance upon an official interpretation of the statute, regulation or order defining the offense, made by public officer or agency legally authorized to interpret such statute.

(5) If a person's reasonable belief is a defense under subsection (4) of this section, nevertheless he may be convicted of an included offense of which he would be guilty if the law were as he believed it to be.

(6) Any defense based upon this section is an affirmative defense.

94-2-104. **Absolute Liability.**

A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in 94-2-101 (28), 94-2-101 (32) and 94-2-101 (53) only if the offense is punishable by a fine not exceeding five hundred dollars ($500), and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

94-2-105. **Causal Relationship Between—Conduct And Result.**

(1) Conduct is the cause of a result if:

(a) without the conduct the result would not have occurred; and

(b) any additional causal requirements imposed by the specific statute defining the offense are satisfied.

(2) If purposely or knowingly causing a result is an element of an offense, and the result is not within the contemplation or purpose of the offender, either element can nevertheless be established if:

(a) the result differs from that contemplated only in the respect that a different person or different property is affected, or that the injury or harm caused is less than contemplated; or

(b) the result involves the same kind of harm or injury as contemplated but the precise harm or injury was different or

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occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

(3) If negligently causing a particular result is an element of an offense, and the result is not within the risk of which the offender is aware, or should be aware, either element can nevertheless be established if:

(a) the actual result differs from the probable result only in the respect that a different person or different property is affected, or that the actual injury or harm is less; or

(b) the actual result involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

94-2-106. **Accountability For Conduct Of Another.**

A person is responsible for conduct which is an element of an offense, if the conduct is either that of the person himself, or that of another and he is legally accountable for such conduct as provided in section 94-2-107, or both.

94-2-107. **When Accountability Exists.**

A person is legally accountable for the conduct of another when:

(1) having a mental state described by the statute defining the offense, he causes another to perform the conduct, regardless of the legal capacity or mental state of the other person; or

(2) the statute defining the offense makes him so accountable; or

(3) either before or during the commission of an offense, and with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense. However, a person is not so accountable if:

(a) he is a victim of the offense committed unless the statute defining the offense provides otherwise; or

(b) before the commission of the offense, he terminates his effort to promote or facilitate such commission and does one of the following: wholly deprives his prior efforts of effectiveness in such commission, or gives timely warning to the proper law enforcement authorities, or otherwise makes proper effort to prevent the commission of the offense.

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94-2-108. **Separate Conviction Of Person Accountable.**

A person who is legally accountable for the conduct of another which is an element of an offense may be convicted upon proof that the offense was committed and that he was so accountable, although the other person claimed to have committed the offense has not been prosecuted or convicted, or has been convicted of a different offense or is not amenable to justice, or has been acquitted.

94-2-109. **Responsibility.**

(1) No person is capable of committting any offense unless he has attained his sixteenth birthday at the time the act in question was committed. Any person who has not yet attained his eighteenth birthday shall be subject to the law as provided in title 10, chapter 6, R.C.M. 1947.

(2) A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition is involuntarily produced and deprives him or his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which is an element of the offense.

94-2-110. **Substitutes For Negligence And Knowledge.**

When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

94-2-111. **Consent As A Defense.**

(1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or

(b) by reason of youth, mental disease or defect or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) it is induced by force, duress or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to.

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94-2-112. **Criminal Responsibility Of Corporations.**

(1) A corporation may be prosecuted for the commission of an offense if, but only if:

(a) the offense is a misdemeanor, and is defined by sections 94-6-307, 94-6-308, 94-6-311, 94-6-312, 94-6-313, 94-8-108, 94-8-109, 94-8-111, 94-8-112, 94-8-113 of this code, or is defined by another statute which clearly indicates a legislative purpose to impose liability on a corporation; and an agent of the corporation performs the conduct which is an element of the offense while acting within the scope of his office or employment and in behalf of the corporation, except that any limitation in the defining statute, concerning the corporation's accountability for certain agents or under certain circumstances, is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed, by the board of directors or by a high managerial agent who is acting within the scope of his employment in behalf of the corporation.

(2) A corporation's proof, that the high managerial agent having supervisory responsibility over the conduct which is the subject matter of the offense exercised due diligence to prevent the commission of the offense, is a defense to a prosecution for any offense to which subsection (1) (a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "Agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation.

(b) "High managerial agent" means an officer of the corporation, or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

94-2-113. **Accountability For Conduct Of Corporation.**

(1) A person is legally accountable for conduct which is an element of an offense and which, in the name or in behalf of a corporation, he performs or causes to be performed, to the same extent as if the conduct were performed in his own name or behalf.

(2) An individual who has been convicted of an offense by reason of his legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual

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upon conviction of such offense, although only a lesser or different punishment is authorized for the corporation.

CHAPTER 3: JUSTIFIABLE USE OF FORCE: EXONERATION.

94-3-101. **Definitions.**

(1) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(2) "Force likely to cause death or serious bodily harm" within the meaning of this chapter includes but is not limited to:

(a) the firing of a firearm in the direction of a person, even though no purpose exists to kill or inflict serious bodily harm; and

(b) the firing of a firearm at a vehicle in which a person is riding.

94-3-102. **Use Of Force In Defense Of Person.**

A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or another, or to prevent the commission of a forcible felony.

94-3-103. **Use Of Force In Defense Of Occupied Structure.**

A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon an occupied structure. However, he is justified in the use of force likely to cause death or serious bodily harm only if:

(1) the entry is made or attempted in violent, riotous, or tumultuous manner, and he reasonably believes that such force is necessary to prevent an assault upon, or offer of personal violence to him or another then in the occupied structure; or

(2) he reasonably believes that such force is necessary to prevent the commission of a forcible felony in the occupied structure.

94-3-104. **Use Of Force In Defense Of Other Property.**

A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's

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trespass on or other tortious or criminal interference with either real property (other than an occupied structure) or personal property, lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.

94-3-105. **Use Of Force By Aggressor.**

The justification described in the preceding sections of this chapter is not available to a person who:

(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against himself, unless:

(a) such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm, and that he has exhausted every reasonably means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

94-3-106. **Use Of Force To Prevent Escape.**

(1) A peace officer or other person who has an arrested person in his custody is justified in the use of such force to prevent the escape of the arrested person from custody as he would be justified in using if he were arresting such person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, which he reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

94-3-107. **Use Of Force By Parent.**

A parent or an authorized agent of any parent or a guardian, master, or teacher is justified in the use of such force as is reasonable and necessary to restrain or correct his child, ward, apprentice or pupil.

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94-3-108. **Use Of Force In Resisting Arrest.**

A person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

94-3-109. **Execution Of Death Sentence.**

A public servant who, in the exercise of his official duty, puts a person to death pursuant to a sentence of a court of competent jurisdiction, is justified if he acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence.

94-3-110. **Compulsion.**

A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm, if he reasonably believes that death or serious bodily harm will be inflicted upon him if he does not perform such conduct.

94-3-111. **Entrapment.**

A person is not guilty of an offense if his conduct is incited or induced by a public servant, or his agent for the purpose of obtaining evidence for the prosecution of such person. However, this section is inapplicable if a public servant or his agent, merely affords to such person the opportunity or facility for committting an offense in furtherance of criminal purpose which such person has originated.

94-3-112. **Affirmative Defense.**

A defense of justifiable use of force, based on the provisions of this chapter is an affirmative defense.

CHAPTER 4: INCHOATE OFFENSES.

94-4-101. **Solicitation.**

(1) A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages or facilitates the commission of that offense.

(2) A person convicted of soliciation shall be punished not to exceed the maximum provided for the offense solicited.

94-4-102. **Conspiracy.**

(1) A person commits the offense of conspiracy when, with

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the purpose that an offense be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by him or by a coconspirator.

(2) It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:

(a) has not been prosecuted or convicted; or

(b) has been convicted of a different offense; or

(c) is not amenable to justice; or

(d) has been acquitted; or

(e) lacked the capacity to commit the offense.

(3) A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

94-4-103. **Attempt.**

(1) A person commits the offense of attempt when, with the purpose to commit a specific offense, he does any act toward the commission of such offense.

(2) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

(4) A person shall not be liable under this section, if under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, he avoided the commission of the offense attempted by abandoning his criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt.

CHAPTER 5: OFFENSES AGAINST THE PERSON.

Part One: Homicide.

94-5-101. **Criminal Homicide.**

(1) A person commits the offense of criminal homicide if he purposely, knowingly or negligently causes the death of another human being.

(2) Criminal homicide is deliberate homicide, mitigated deliberate homicide, or negligent homicide.

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94-5-102. **Delberate Homicide.**

(1) Except as provided in section 94-5-103 (1) (a), criminal homicide constitutes deliberate homicide if:

(a) it is committed purposely or knowingly; or

(b) it is committed while the offender is engaged in or is an accomplice in the commission of, or an attempt to commit, or flight after committting or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape or any other felony which involves the use or threat of physical force or violence against any individual.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in section 94-5-105, or by imprisonment in the state prison for any term not to exceed one hundred (100) years.

94-5-103. **Mitigated Deliberate Homicide.**

(1) Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate homicide is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for any term not to exceed forty (40) years.

94-5-104. **Negligent Homicide.**

(1) Criminal homicide constitutes negligent homicide when it is committed negligently.

(2) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-5-105. **Sentence Of Death For Deliberate Homicide.**

(1) When a defendant is convicted of the offense of deliberate homicide the court shall impose a sentence of death in the following circumstances, unless there are mitigating circumstances:

(a) The deliberate homicide was committed by a person serving a sentence of imprisonment in the state prison; or

(b) The defendant was previously convicted of another deliberate homicide; or

(c) The victim of the deliberate homicide was a peace officer killed while performing his duty; or

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(d) The deliberate homicide was committed by means of torture; or

(e) The deliberate homicide was committed by a person lying in wait or ambush; or

(f) The deliberate homicide was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

94-5-106. **Aiding Or Soliciting Suicide.**

(1) A person who purposely aids or solicits another to commit suicide, but such suicide does not occur commits the offense of aiding or soliciting suicide.

(2) A person convicted of the offense of aiding or soliciting a suicide shall be imprisoned in the state prison for any term not to exceed ten (10) years.

Part Two: Assault.

94-5-201. **Assault.**

(1) A person commits the offense of assault if he:

(a) purposely or knowingly causes bodily injury to another; or

(b) negligently causes bodily injury to another with a weapon; or

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of another whether or not the offender believes the firearm to be loaded.

(2) A person convicted of assault shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-5-202. **Aggravated Assault.**

(1) A person commits the offense of aggravated assault if he purposely or knowingly causes:

(a) serious bodily injury to another; or

(b) bodily injury to another with a weapon; or

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(c) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(d) bodily injury to a peace officer.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

94-5-203. **Intimidation.**

(1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:

(a) inflict physical harm on the person threatened or any other person or on property; or

(b) subject any person to physical confinement or restraint; or

(c) commit any criminal offense; or

(d) accuse any person of an offense; or

(e) expose any person to hatred, contempt, or ridicule; or

(f) take action as a public official against anyone or anything or withhold official action, or cause such action or withholding.

(2) A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

(3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed ten (10) years.

Part Three: Kidnapping.

94-5-301. **Unlawful Restraint.**

(1) A person commits the offense of unlawful restraint if he knowingly or purposely and without lawful authority restrains another so as to interfere substantially with his liberty.

(2) A person convicted of the offense of unlawful restraint shall be fined not to exceed five hundred dollars ($500), or be imprisoned in the county jail for any term not to exceed six (6) months or both.

94-5-302. **Kidnapping.**

(1) A person commits the offense of kidnapping if he know-

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ingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation, or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-5-303. **Aggravated Kidnapping.**

(1) A person commits the offense of aggravated kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation, or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward, or as a shield or hostage; or

(b) to facilitate commission of any felony or flight thereafter; or

(c) to inflict bodily injury on or to terrorize the victim or another; or

(d) to interfere with the performance of any governmental or political function; or

(e) to hold another in a condition of involuntary servitude.

(2) A person convicted of the offense of aggravated kidnapping shall be punished by death as provided in section 94-5-304, or be imprisoned in the state prison for any term not to exceed one hundred (100) years unless he has voluntarily released the victim, alive, in a safe place, and not suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-5-304. **Sentence Of Death For Aggravated Kidnapping.**

A court shall impose the sentence of death following conviction of aggravated kidnapping if it finds that the victim is dead as the result of the criminal conduct unless there are mitigating circumstances.

94-5-305. **Custodial Interference.**

(1) A person commits the offense of custodial interference if, knowing that he has no legal right to do so, he takes, entices or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution.

(2) A person convicted of the offense of custodial interference

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shall be imprisoned in the state prison for any term not to exceed ten (10) years. A person does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to trial.

Part Four: Robbery.

94-5-401. **Robbery.**

(1) A person commits the offense of robbery if, in the course of committing a theft, he:

(a) inflicts bodily injury upon another; or

(b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or

(c) commits or threatens immediately to commit any felony, other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for any term not to exceed forty (40) years.

(3) "In the course of committting a theft" as used in this section includes acts which occur in an attempt to commit or in the commission of theft, or in flight after the attempt or commission.

Part Five: Sexual Crimes.

94-5-501. **Definitions.**

In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

94-5-502. **Sexual Assault.**

(1) A person who knowingly subjects another not his spouse to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months.

(3) If the victim is less than sixteen (16) years old and the offender is three (3) or more years older than the victim, or if the offender inflicts bodily injury upon anyone in the course of committting sexual assault, he shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

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94-5-503. **Sexual Intercourse Without Consent.**

(1) A male person who knowingly has sexual intercourse without consent with a female not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(3) If the victim is less than sixteen (16) years old and the offender is three (3) or more years older than the victim, or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term not to exceed forty (40) years.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

94-5-504. **Indecent Exposure.**

(1) A person who, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) A person convicted of the offense of indecent exposure shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-5-505. **Deviate Sexual Conduct.**

(1) A person who knowingly engages in deviate sexual relations, or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed ten (10) years.

(3) A person convicted of deviate sexual conduct without consent shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

94-5-506. **Provisions Generally Applicable To Sexual Crimes (94-5-501 to 94-5-505).**

(1) When criminality depends on the victim being less than sixteen (16) years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such

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belief shall not be deemed reasonable if the child is less than fourteen (14) years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the extension shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart under a decree of judicial separation. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (94-5-502 to 94-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant, and the intoxicating substance was voluntarily and knowingly taken.

Part Six: Offenses Against The Family.

94-5-601. **Definitions.**

In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

94-5-602. **Prostitution.**

(1) A person commits the offense of prostitution if such person:

(a) engages in or agrees or offers to engage in sexual intercourse with another person for compensation; or

(b) loiters in or within view of any public place for the purpose of being hired to engage in sexual intercourse.

(2) A person convicted of prostitution shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-5-603. **Promoting Prostitution.**

A person commits the offense of promoting prostitution if he purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business; or

(b) procures an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate; or

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(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute; or

(d) solicits a person to patronize a prostitute; or

(e) procures a prostitute for a patron; or

(f) transports a person into or within this state with the purpose to promote that person's engaging in prostitution, or procures or pays for transportation with that purpose; or

(g) leases or otherwise permits a place controlled by the offender alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution, or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part, upon the earnings of a person engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self support.

(2) A person commits the offense of aggravated promotion of prostitution if he purposely or knowingly commits any of the following acts:

(a) Compels another to engage in or promote prostitution.

(b) Promotes prostitution of a child under the age of eighteen (18) years, whether or not he is aware of the child's age.

(c) Promotes the prostitution of his wife, child, ward or any person for whose care, protection or support he is responsible.

(3) A person convicted of promoting prostitution shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of aggravated promotion of prostitution shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(4) Evidence.

On the issue whether a place is a house of prostitution the following, in addition to all other admissible evidence, shall be admissible:

(a) Its general repute; the repute of the persons who reside in or frequent the place; or the frequency, timing and duration of visits by nonresidents.

(b) Testimony of a person against his spouse shall be admissible under this section.

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94-5-604. **Bigamy.**

(1) A person commits the offense of bigamy if, while married, he knowingly contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

(a) the offender believes on reasonable grounds that the prior spouse is dead; or

(b) the offender and the prior spouse have been living apart for five (5) consecutive years throughout which the prior spouse was not known by the offender to be alive; or

(c) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the offender does not know that judgment to be invalid; or

(d) the offender reasonably believes that he is legally eligible to remarry.

(2) A person convicted of bigamy shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-5-605. **Marrying A Bigamist.**

(1) A person commits the offense of marrying a bigamist if he contracts or purports to contract a marriage with another knowing that the other is thereby committing bigamy.

(2) A person convicted of the offense of marrying a bigamist shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any period not to exceed six (6) months, or both.

94-5-606. **Incest.**

(1) A person commits the offense of incest if he knowingly marries or cohabits or has sexual intercourse with an ancestor, a descendant, a brother or sister of the whole or half blood. "Cohabit" means to live together under the representation of being married. The relationships referred to herein include blood relationships without regard to legitimacy, and relationships of parent and child by adoption.

(2) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-5-607. **Endangering Welfare Of Children.**

(1) A parent, guardian, or other person supervising the welfare of a child less than sixteen (16) years old commits the offense of endangering the welfare of children if he knowingly endangers

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the child's welfare by violating a duty of care, protection or support.

(2) A person convicted of endangering welfare of children shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

(3) **Evidence.** On the issue of whether there has been a violation of the duty of care, protection, and support, the following in addition to all other admissible evidence, shall be admissible: cruel treatment, abuse, infliction of unnecessary and cruel punishment, abandonment, neglect, lack of proper medical care, clothing, shelter and food; evidence of past bodily injury.

(4) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.

94-5-608. **Nonsupport.**

(1) A person commits the offense of nonsupport if he fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child, or other dependent.

(2) A person commits the offense of aggravated nonsupport if:

(a) the offender has left the state to avoid the duty of support;

(b) the offender has been previously convicted of the offense of nonsupport.

(3) A person convicted of nonsupport shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of aggravated nonsupport shall be imprisoned in the state prison for any term not to exceed ten (10) years.

(4) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of person or persons that the defendent has failed to support.

94-5-609. **Unlawful Transactions With Children.**

(1) A person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of

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majority except as authorized under appropriate city ordinances; or

(b) sells or gives intoxicating substances to a child under the age of majority; or

(c) being a junk dealer, pawnbroker or second hand dealer he receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed one thousand dollars ($1,000) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-5-610. **Unlawful Possession Of Intoxicating Substance By Children.**

(1) A person who has not reached the age of majority commits the offense of possession of intoxicating substance if he knowingly has in his possession an intoxicating substance.

(2) A person convicted of the offense of possessing an intoxicating substance shall be fined not to exceed fifty dollars ($50) or be imprisoned in the county jail for any term not to exceed ten (10) days, or both.

CHAPTER 6: OFFENSES AGAINST PROPERTY.

Part One: Criminal Mischief And Arson.

94-6-101. **Definitions.**

In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

94-6-102. **Criminal Mischief.**

(1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages or destroys any property of another without consent; or

(b) without consent tampers with property of another so as to endanger or interfere with persons or property or its use; or

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has

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opened, leading in or out of any inclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of the offense of criminal mischief shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of one hundred fifty dollars ($150), or injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-6-103. **Negligent Arson.**

(1) A person commits the offense of negligent arson if he purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another and thereby negligently:

(a) places another person in danger of death or bodily injury; or

(b) places property of another in danger of damage or destruction.

(2) A person convicted of the offense of negligent arson shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. If the offender places another person in danger of death or bodily injury, he shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-6-104. **Arson.**

(1) A person commits the offense of arson when, by means of fire or explosives, he knowingly or purposely:

(a) damages or destroys an occupied structure of another without consent; or

(b) places another person in danger of death or bodily injury.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

94-6-105. **Possession Of Explosives.**

(1) A person commits the offense of possession of explosives if he possesses, manufactures or transports any explosive compound

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or timing or detonating device for use with any explosive compound or incendiary device, and:

(a) has the purpose to use such explosive or device to commit any offense; or

(b) knows that another has the purpose to use such explosive or device to commit any offense.

(2) A person convicted of the offense of possession of explosives shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

Part Two: Criminal Trespass And Burglary.

94-6-201. **Definitions.**

"Enter Or Remain Unlawfully." A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this action.

94-6-202. **Criminal Trespass To Vehicles.**

(1) A person commits the offense of criminal trespass to vehicles when he purposely or knowingly and without authority enters any vehicle or any part thereof.

(2) A person convicted of the offense of criminal trespass to vehicles shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-6-203. **Criminal Trespass To Property**

(1) A person commits the offense of criminal trespass to property if he knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed five hundred dollars ($500)

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or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-6-204. **Burglary.**

(1) A person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

(2) A person commits the offense of aggravated burglary if he knowingly enters or remains in an occupied structure with the purpose to commit a felony therein, and

(a) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense, or in immediate flight thereafter he purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed ten (10) years. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed forty (40) years.

94-6-205. **Possession Of Burglary Tools.**

(1) A person commits the offense of possession of burglary tools when he knowingly possesses any key, tool, instrument, device, or any explosive, suitable for breaking into an occupied structure or vehicle or any depository designed for the safekeeping of property, or any part thereof with the purpose to commit an offense therewith.

(2) A person convicted of possession of burglary tools shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

Part Three: Theft And Related Offenses.

94-6-301. **Definitions.**

In this part, unless a different meaning plainly is required, the definitions given in chapter, 94-2-101 apply.

94-6-302. **Theft.**

(1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner, and:

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(a) has the purpose of depriving the owner of the property; or

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner, and:

(a) has the purpose of depriving the owner of the property; or

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another, and:

(a) has the purpose of depriving the owner of the property; or

(b) purposely or knowingly uses, conceals or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner of the property.

(4) A person convicted of the offense of theft of property not exceeding one hundred fifty dollars ($150) in value shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of the offense of theft of property exceeding one hundred fifty dollars ($150) in value or theft of any commonly domesticated hoofed animal shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-6-303. **Theft Of Lost Or Mislaid Property.**

(1) A person who obtains control over lost or mislaid property commits the offense of theft when he:

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(a) knows or learns the identity of the owner or knows, or is aware of, or learns of a reasonable method of identifying the owner; and

(b) fails to take reasonable measures to restore the property to the owner; and

(c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) A person convicted of theft of lost or mislaid property shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a period not to exceed six (6) months.

94-6-304. **Theft Of Labor Or Services Or Use Of Property.**

(1) A person commits the offense of theft when he obtains the temporary use of property, labor or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor or services.

(2) A person convicted of theft of labor or services or use of property shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-6-305. **Unauthorized Use Of Motor Vehicles.**

(1) A person commits the offense of unauthorized use of motor vehicles if he knowingly operates the automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle of another without his consent.

(2) A person convicted of unauthorized use of motor vehicles shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. It is an affirmative defense that the offender reasonably belived that the owner would have consented to the operation had he known of it.

94-6-306. **Offender's Interest In The Property.**

(1) It is no defense to a charge of theft of property that the offender has an interest therein, when the owner also has an interest to which the offender is not entitled.

(2) It is no defense that theft was from the offender's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

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94-6-307. **Deceptive Practices.**

(1) A person commits the offense of deceptive practices when he purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred; or

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services; or

(c) makes or directs another to make or knowingly accepts a false or deceptive statement to any person respecting his financial condition for the purpose of procuring a loan or credit; or

(d) obtains, or attempts to obtain property, labor or services by any of the following means:

(i) Using a credit card which was issued to another, without the other's consent.

(ii) Using a credit card that has been revoked or cancelled.

(iii) Using a credit card that has been falsely made, counterfeited, or altered in any material respect.

(iv) Using the pretended number or description of a fictitious credit card.

(v) Using a credit card which has expired provided that credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained, or attempted to be obtained exceeds one hundred fifty dollars ($150) then the offender shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-6-308. **Deceptive Business Practices.**

(1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession he purposely or knowingly:

(a) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(b) sells, offers, or exposes for sale, or delivers less than the represented quantity of any commodity or service; or

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(c) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnished the weight or measure; or

(d) sells, offers or exposes for sale adulterated commodities; or

(e) sells, offers or exposes for sale mislabeled commodities; or

(f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage; or

(b) represented as being another person's produce, though otherwise labeled accurately as to quality and quantity.

(4) A person convicted of the offense of deceptive business practices shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-6-309. **Issuing A Bad Check.**

(1) A person commits the offense of issuing a bad check when, with the purpose of obtaining control over property or to secure property, labor or services of another, he issues or delivers a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within five (5) days after written notice of nonpayment has been received by the issuer is prima facie evidence that he knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. If the offender has engaged in issuing bad checks which are part of a common scheme, or if the value of any property, labor or serv-

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ices obtained, or attempted to be obtained exceeds one hundred fifty dollars ($150), he shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-6-310. **Forgery.**

(1) A person commits the offense of forgery when, with purpose to defraud, he knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in such manner that it purports to have been made by another or at another time, or with different provisions, or of different composition; or

(b) issues or delivers such document or other object knowing it to have been thus made or altered; or

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter or terminate any right, obligation or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes, but is not limited to, one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months or both. If the forgery is part of a common scheme or if the value of the property, labor or services obtained or attempted to be obtained, exceeds one hundred fifty dollars ($150) the offender shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

94-6-311. **Obscuring The Identity Of A Machine.**

(1) A person commits the offense of obscuring the identity of a machine if he:

(a) removes, defaces, covers, alters, destroys or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle or

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electrical device, with the purpose to conceal, misrepresent or transfer any such machine, vehicle or electrical device; or

(b) possesses with the purpose to conceal, misrepresent or transfer any such machine, vehicle or device knowing that such serial number or other identification number or mark has been removed or otherwise obscured.

(2) A person convicted of obscuring the identity of a machine shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-6-312. **Illegal Branding Or Altering Or Obscuring A Brand.**

(1) A person commits the offense of illegal branding or altering or obscuring a brand if he marks or brands any commonly domesticated hoofed animal or removes, covers, alters or defaces any existing mark or brand on any commonly domesticated hoofed animals with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer or prevent identification of said animal.

(2) A person convicted of the offense of illegal branding or altering or obscuring a brand shall be imprisoned in the state prison for any term not to exceed ten (10) years.

9-6-313. **Defrauding Creditors.**

(1) A person commits the offense of defrauding secured creditors if he destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in section 87-1-201 (37) of the Uniform Commercial Code.

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-6-314. **Effect Of Criminal Possession Of Stolen Property.**

Possession of stolen property shall not constitute proof of the commission of the offense of theft; such fact shall place a burden on the possessor to remove the effect of such fact as a circumstance to be considered with all other evidence pointing to his guilt.

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CHAPTER 7: OFFENSES AGAINST PUBLIC ADMINISTRATION.

Part One: Bribery And Corrupt Influence.

94-7-101. **Definitions.**

In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

94-7-102. **Bribery In Official And Political Matters.**

(1) A person commits the offense of bribery if he purposely or knowingly offers, confers, or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(b) any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(2) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed ten (10) years, and shall forever be disqualified from holding any public office in this state.

94-7-103. **Threats And Other Improper Influence In Official And Political Matters.**

(1) A person commits an offense under this section if he purposely or knowingly:

(a) threatens unlawful harm to any person with the purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(b) threatens harm to any public servant with the purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(c) threatens harm to any public servant or party official with the purpose to influence him to violate his duty; or

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(d) privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument or other communication designed to influence the outcome on the basis of considerations other than those authorized by law. It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason; or

(e) as a juror, or officer in charge of a jury, receives or permits to be received any communication relating to any matter pending before such jury, except according to the regular course of proceedings.

(2) A person convicted under this section shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both, unless the offender threatened to commit an offense or made a threat with the purpose to influence a judicial or administrative proceeding, in which case the offender shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-7-104. **Compensation For Past Official Behavior.**

(1) A person commits an offense under this section if he knowingly solicits, accepts or agrees to accept any pecuniary benefit it as compensation for having, as public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty. A person commits an offense under this section if he knowingly offers, confers or agrees to confer compensation, acceptance of which is prohibited by this section.

(2) A person convicted under this section shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-7-105. **Gifts To Public Servants By Persons Subject To Their Jurisdiction.**

(1) No public servant in any department or agency exercising regulatory function, or conducting inspections or investigations, or carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated.

(2) No public servant having any discretionary function to

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perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction.

(3) No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority or participating in the enforcement of its decision, shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or tribunal with which he is associated.

(4) No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the legislature or any committee or agency thereof.

(5) **Exceptions.** This section shall not apply to:

(a) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise entitled; or

(b) trivial benefits incidental to personal, professional or business contracts and involving no substantial risk of undermining official impartiality.

(6) No person shall knowingly confer, or offer, or agree to confer, any benefit prohibited by the foregoing subsections.

(7) A person convicted of an offense under this section shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

Part Two: Perjury And Other Falsification In Offical Matters.

94-7-201. **Definitions.**

In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

94-7-202. **Perjury.**

(1) A person commits the offense of perjury if in any official proceeding he knowingly makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material.

(2) A person convicted of perjury shall be punished by im-

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prisonment in the state prison for any term not to exceed ten (10) years.

(3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarent was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified shall be be deemed to have been duly sworn or affirmed.

(5) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falisification was or would be exposed and before the falsification subsequently affected the proceeding.

(6) Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) No person shall be convicted of an offense under this section where proof of falsity rests solely upon the testimony of a single person other than the defendant.

94-7-203. **False Swearing.**

(1) A person commits the offense of false swearing if he knowingly makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made when he does not believe the statement to be true, and:

(a) the falsification occurs in an official proceeding; or

(b) the falsification is purposely made to mislead a public servant in performing his official function; or

(c) the statement is one which is required by law to be

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sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (4) to (7) of section 94-7-202 apply to this section.

(3) A person convicted of false swearing shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-7-204. **Unsworn Falsification To Authorities.**

(1) A person commits an offense under this section if, with purpose to mislead a public servant in performing his official function, he:

(a) makes any written false statement which he does not believe to be true; or

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(c) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark or other object which he knows to be false.

(2) A person convicted of an offense under this section shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-7-205. **False Alarms To Agencies Of Public Safety.**

(1) A person commits an offense under this section if he knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, which deals with emergencies involving danger to life or property.

(2) A person convicted of an offense under this section shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-7-206. **False Reports To Law Enforcement Authorities.**

(1) A person commits an offense under this section if he knowingly:

(a) gives false information to any law enforcement officer with the purpose to implicate another; or

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(b) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(c) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

(2) A person convicted under this section shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-7-207. **Tampering With Witnesses And Informants.**

(1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely; or

(b) withhold any testimony, information, document or thing; or

(c) elude legal process summoning him to testify or supply evidense; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-7-208. **Tampering With Or Fabricating Physical Evidence.**

(1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he

(a) alters, destroys, conceals or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) makes, presents or uses any record, document or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in such proceeding or investigation.

(2) A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed ten (10) years.

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94-7-209. **Tampering With Public Records Or Information.**

(1) A person commits the offense of tampering with public records or information if he:

(a) knowingly makes a false entry in, or false alteration of, any record, document, legislative bill or enactment, or thing belonging to, or received or issued, or kept by the government for information or record, or required by law to be kept by others for information of the government; or

(b) makes, presents or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in paragraph (a); or

(c) purposely destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(2) A person convicted of the offense of tampering with public records or information shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-7-210. **Impersonating A Public Servant.**

(1) A person commits the offense of impersonating a public servant if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(2) A person convicted of impersonating a public servant shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

Part Three: Obstructing Governmental Operations.

94-7-301. **Resisting Arrest.**

A person commits the offense of resisting arrest if he knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:

(a) using or threatening to use physical force or violence against the peace officer or another; or

(b) using any other means which creates a risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the arrest was unlawful, provided the peace officer was acting under color of his official authority.

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(3) A person convicted of the offense of resisting arrest shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-7-302. **Obstructing A Peace Officer Or Other Public Servant.**

(1) A person commits the offense of obstructing a peace officer or public servant if he knowingly obstructs, impairs or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function.

(2) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, provided he was acting under color of his official authority.

(3) A person convicted of the offense of obstructing a peace officer or other public servant shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-7-303. **Obstructing Justice.**

(1) For the purpose of this section "an offender" means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.

(2) A person commits the offense of obstructing justice if, knowing a person is an offender, he purposely:

(a) harbors or conceals an offender; or

(b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law; or

(c) provides an offender with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or

(d) prevents or obstructs, by means of force, deception or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender; or

(e) suppresses by act of concealment, alteration or destruction any physical evidence that might aid in the discovery or apprehension of an offender; or

(f) aids an offender who is subject to official detention to escape such official detention.

(3) A person convicted of obstructing justice be:

(a) imprisoned in the state prison for a term not to exceed

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ten (10) years if the offender has been or is liable to be charged with a felony; or

(b) fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both, if the offender has been or is liable to be charged with a misdemeanor.

94-7-304. **Failure To Aid A Peace Officer.**

(1) Where it is reasonable for a peace officer to enlist the cooperation of a person in

(a) effectuating or securing an arrest of another (pursuant to R.C.M. 95-609), or

(b) preventing the commission by another of an offense, a peace officer may order such person to cooperate. A person commits the offense of failure to aid a peace officer if he knowingly refuses to obey such an order.

(2) A person convicted of the offense of failure to aid a peace officer shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-7-305. **Compounding A Felony.**

(1) A person commits the offense of compounding a felony if he knowingly accepts or agrees to accept any pecuniary benefit in consideration for:

(a) refraining from seeking prosecution of a felony; or

(b) refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

(2) A person convicted of compounding a felony shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-7-306. **Escape.**

(1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail,

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or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed twenty (20) years if he escapes from a state prison, county jail or city jail by the use or threat of force, physical violence, weapon or simulated weapon; or

(b) imprisoned in the state prison for a term not to exceed ten (10) years if he:

(i) escapes from a state prison, county jail or city jail; or

(ii) escapes from another official detention by the use or threat of force, physical violence, weapon or simulated weapon; or

(c) fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both if he commits escape under circumstances other than (a) and (b) of this subsection.

94-7-307. **Transferring Illegal Articles Or Unauthorized Communication.**

(1) Transferring Illegal Articles,

(a) A person commits the offense of transferring illegal articles if he knowingly or purposely transfers any article or thing to a person subject to official detention or is transferred any article or thing by a person subject to official detention.

(b) A person convicted of transferring illegal articles shall be:

(i) imprisoned in the state prison for a term not to exceed twenty (20) years if he conveys a weapon to a person subject to official detention; or

(ii) fined not to exceed one hundred dollars ($100) if he conveys any other article or thing to a person subject to official detention or be imprisoned in the county jail for any term not to exceed ten (10) days, or both. This shall not apply unless the offender knew or was given sufficient notice so that he reasonably should have known that the article or thing he conveyed was an illegal article.

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(2) **Unauthorized Communication.**

(a) A person commits the offense of unauthorized communication if he knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of such official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined not to exceed one hundred dollars ($100) or be imprisoned in the county jail for any term not to exceed ten (10) days, or both.

94-7-308. **Bail-Jumping.**

(1) A person commits the offense of bail-jumping if, having been set at liberty by court order, with or without security, upon condition that he will subsequently appear at a specified time and place, he purposely fails without lawful excuse to appear at that time and place.

(2) This section shall not interfere with the exercise by any court of its power to punish for contempt.

(3) This section shall not apply to a person set at liberty by court order upon condition that he will appear in connection with a charge of having committed a misdemeanor, except it shall apply where the judge has released the defendant on his own recognizance.

(4) A person convicted of bail-jumping in connection with a felony shall be imprisoned in the state prison for a term not to exceed ten (10) years. In all other cases he shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-7-309. **Criminal Contempt.**

(1) A person commits the offense of criminal contempt when he knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior, committed during the sitting of a court, in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority; or

(b) breach of the peace, noise, or other disturbance, directly tending to interrupt a court's proceeding; or

(c) purposely disobeying or refusing any lawful process or other mandate of a court; or

(d) unlawfully refusing to be sworn as a witness in any court porceeding or, after being sworn, refusing to answer any legal and proper interrogatory; or

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(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; or

(f) purposely failing to obey any mandate, process or notice relative to juries issued pursuant to title 93, chapters 12, 13, 14, 15, 16, 17 and 18, R.C.M. 1947.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

Part Four: Official Misconduct.

94-7-401. **Official Misconduct.**

(1) A public servant commits the offense of official misconduct when, in his official capacity, he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction; or

(b) knowingly performs an act in his official capacity which he knows is forbidden by law; or

(c) with the purpose to obtain advantage for himself or another, he performs an act in excess of his lawful authority; or

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section, and any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) shall be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all back pay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal.

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Part Five: Treason, Flags and Related Offenses.

94-7-502. **Desecration Of Flags.**

(1) In this section "flag" means anything which is or purports to be the official flag of the United States, the United States shield, the United States coat of arms, the Montana state flag, or a copy, picture, or representation of any of them.

(2) A person commits the offense of desecration of flags if he purposely or knowingly:

(a) publicly mutilates, defiles, or casts contempt upon the flag; or

(b) places on or attaches to the flag any work, mark, design, or advertisement not properly a part of such flag or exposes to public view a flag so altered; or

(c) manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) uses the flag for commercial advertising purposes.

(3) A person convicted of the offense of desecration of flags shall be imprisoned in the state prison for any term not to exceed ten (10) years.

(4) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are not unauthorized words or designs on such flags and provided the flag is not connected with any advertisement.

94-7-503. **Criminal Syndicalism.**

(1) "Criminal syndicalism" means the advocacy of crime or malicious damage or injury to property, or violence or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

(2) A person commits the offense of criminal syndicalism if he purposely or knowingly:

(a) orally or by means of writing advocates or promotes the doctrine of criminal syndicalism; or

(b) organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(c) for or on behalf of another who purposely thereby to advocate or promote the doctrine of criminal syndicalism, dis-

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tributes, sells, publishes, or publicly displays, any writing advocating or advertising such doctrine.

(3) A person convicted of the offense of criminal syndicalism shall be imprisoned in the state prison for a term not to exceed ten (10) years.

(4) Whoever, being the owner or in possession or control of any premises knowingly permits any assemblage of persons to use such premise for the purpose of advocating or promoting the doctrine of criminal syndicalism shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-7-504. **Bringing Armed Men Into The State.**

(1) A person commits the offense of bringing armed men into the state when he knowingly brings, or aids in bringing, into this state an armed person or armed body of men for the purpose of engaging in criminal or socially disruptive activities or to usurp the powers of law enforcement authorities.

(2) A person convicted of the offense of bringing armed men into the state shall be imprisoned in the state prison for a term not to exceed ten (10) years.

CHAPTER 8: OFFENSES AGAINST PUBLIC ORDER.

94-8-101. **Disorderly Conduct.**

(1) A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:

(a) quarreling, challenging to fight or fighting; or

(b) making loud or unusual noises; or

(c) using threatening, profane or abusive language; or

(d) discharging firearms; or

(e) rendering vehicular or pedestrian traffic impassable; or

(f) rendering the free ingress or egress to public or private places impassable; or

(g) disturbing or disrupting any lawful assembly or public meeting; or

(h) transmitting a false report or warning of a fire, impending explosion or other catastrophe in such a place that its occurance would endanger human life; or

(i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.

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(2) A person convicted of the offense of disorderly conduct shall be fined not to exceed one hundred dollars ($100) or be imprisoned in the county jail for a term not to exceed ten (10) days, or both.

94-8-102. **Failure Of Disorderly Persons To Disperse.**

(1) Where two (2) or more persons are engaged in disorderly conduct, a peace officer, judge or mayor may order the participants to disperse. A person who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.

(2) A person convicted of the offense of failure to disperse shall be fined not to exceed one hundred dollars ($100) or be imprisoned in the county jail for a term not to exceed ten (10) days, or both.

94-8-103. **Riot.**

(1) A person commits the offense of riot if he purposely and knowingly disturbs the peace by engaging in an act of violence or threat to commit an act of violence as part of an assemblage of five (5) or more persons, which act or threat presents a clear and present danger of, or results in, damage to property or injury to persons.

(2) A person convicted of the offense of riot shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-8-104. **Incitement To Riot.**

(1) A person commits the offense of incitement to riot if he purposely and knowingly commits an act or engages in conduct that urges other persons to riot. Such act or conduct shall not include the mere oral or written advocacy of ideas, or expression of belief, which advocacy or expressions does not urge the commission of an act of immediate violence.

(2) A person convicted of the offense of incitement to riot shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-8-105. **Public Intoxication.**

(1) A person commits the offense of public intoxication if he appears in a public place in a state of visible intoxication as a result of the use of alcohol or any dangerous drug and is

(a) creating a risk to himself or others, or

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(b) conducting himself in an offensive manner.

(2) A person convicted of the offense of public intoxication shall be fined not to exceed fifty dollars ($50) or be imprisoned in the county jail for a term not to exceed ten (10) days, or both.

94-8-106. **Cruelty To Animals.**

(1) A person commits the offense of cruelty to animals if without justification he knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring or killing any animal; carrying any animal in a cruel manner; or

(b) failing to provide an animal in his custody with proper food, drink, or shelter; or

(c) abandoning any helpless animal or abandoning any animal on any highway, railroad or in any other place where it may suffer injury, hunger or exposure or becomes a public charge; or

(d) promoting, sponsoring, conducting or participating in a horse race of more than two (2) miles; or promoting, sponsoring, or conducting or participating in any fight between any animals.

(2) A person convicted of the offense of cruelty to animals shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-8-107. **Public Nuisance.**

(1) "Public nuisance" means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons; or

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage, any public highway or right of way, or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood, or any considerable number of persons (as specified in subsection (1) (a) of this section), is no less a nuisance because the

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extent of the annoyance or damage inflicted upon individuals is unequal.

(4) A person convicted of maintaining a public nuisance shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both. Each day of such conduct constitutes a separate offense.

(5) Action to abate a public nuisance.

(a) Every premise upon which a public nuisance is being maintained may be abated, and the persons maintaining such nuisance and the possessor who permits the same to be maintained may be enjoined from such conduct by an action in equity in the name of the state of Montana by the county attorney, or any resident of the state.

(b) Upon the filing of the complaint in such action the judge may issue a temporary injunction.

(c) In such action evidence of the general reputation of the premises shall be admissible for the purpose of providing the existence of such nuisance.

(d) If the existence of the nuisance be established an order of abatement shall be entered as part of the judgment in the case. The judge issuing such order may, in his discretion:

(i) confiscate all fixtures used on the premises to maintain the nuisance and either sell them and transmit the proceeds to the county general fund, or destroy them or return them to their rightful ownership; or

(ii) close the premises for any period not to exceed one (1) year and during such period the premises shall remain in the custody of the court; or

(iii) allow the premises to be opened upon posting bond sufficient in amount to assure compliance with the order of abatement. The bond shall be forfeited if the nuisance is continued or resumed. The procedure for forfeiture and/or discharge of the bond shall be as provided in section 95-1116.

(iv) any combination of the above.

94-8-108. **Creating A Hazard.**

(1) A person commits the offense of creating a hazard if he knowingly:

(a) discards in any place where it might attract children, a container having a compartment of more than one and one-half (1½) cubic feet capacity and a door or lid that locks or fastens

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automatically when closed and cannot easily be opened from the inside, and fails to remove the door, lid, or locking or fastening device; or

(b) being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft or other hole of a depth of four (4) feet or more and a top width of twelve (12) inches or more, and he fails to cover or fence it with a suitable protective construction; or

(c) tampers with an aircraft without the consent of the owner; or

(d) being the owner or otherwise having possession of property upon which there is a steam engine or steam boiler, he continues to use a steam engine or steam boiler which is in an unsafe condition; or

(e) being a person in the act of game hunting, he acts in a negligent manner or knowingly fails to give all reasonable assistance to any person whom he has injured; or

(f) deposits any hard substance upon or between any railroad tracks, which will tend to derail railroad cars or other vehicles.

(2) A person convicted of the offense of creating a hazard shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-8-109. **Failure To Yield Party Line.**

(1) Any person who fails to relinquish a telephone party line or public pay telephone after he has been requested to do so to permit another to place an emergency call to a fire department or police department, or for medical aid or ambulance service, shall be imprisoned for a term not to exceed ten (10) days or fined not to exceed twenty-five dollars ($25), or both.

(2) It is a defense to prosecution under subsection (1) that the accused did not know or did not have reason to know of the emergency in question, or that the accused was himself using the telephone party line or public pay telephone for such an emergency call.

(3) Any person who requests another to relinquish a telephone party line or public pay telephone on the pretext that he must place an emergency call knowing such pretext to be false, shall be imprisoned for a term not to exceed ten (10) days or fined not to exceed twenty-five dollars ($25), or both.

(4) Every telephone company doing business in this state

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shall print a copy of subsections (1), (2), and (3) of this section in each telephone directory published by it after the effective date of this section.

94-8-110. **Obscenity.**

(1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene to any one under the age of eighteen (18); or

(b) Presents or directs an obscene play, dance or other performance or participates in that portion thereof which makes it obscene to anyone under the age of eighteen (18); or

(c) Publishes, exhibits or otherwise makes available anything obscene to anyone under the age of eighteen (18); or

(d) Performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of eighteen (18); or

(e) Creates, buys, procures or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of eighteen (18); or

(f) Advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) the dominant theme of the material taken as a whole appeals to a purtient interest, that is, a shameful or morbid interest in violence, nudity, sex or excretion; and

(b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and

(c) the material is utterly without redeeming social value.

(3) In any prosecution for an offense under this section evidence shall be admissible to show:

(a) The predominant appeal of the material, and what effect if any, it would probably have on the behavior of people;

(b) The artistic, literary, scientific, educational or other merits of the material;

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(c) The degree of public acceptance of the material in this state;

(d) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the materials; or

(e) Purpose of the author, creator, publisher or disseminator.

(4) A person convicted of obscenity shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-8-111. **Criminal Defamation.**

(1) Defamation matter is anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation.

(2) Whoever with knowledge of its defamatory character, orally, in writing or by any other means, communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than six (6) months in the county jail or a fine of not more than five hundred dollars ($500), or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true and is communicated with good motives and for justifiable ends; or

(b) the communication is absolutely privileged; or

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern; or

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further such interest or duty.

(4) No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two (2) other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty.

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94-8-112. **Bribery In Contests.**

(1) A person commits the offense of bribery in contests if he purposely or knowingly offers, confers, or agrees to confer upon another, or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's failure to use his best efforts in connection with any professional or amateur athletic contest, sporting event or exhibition; or

(b) any benefit as consideration for a violation of a known duty as a person participating in, officiating or connected with any professional or amateur athletic contest, sporting event or exhibition.

(2) A person convicted of the offense of bribery in contests shall be fined not to exceed five thousand dollars ($5,000) or be imprisoned in the state prison for a term not to exceed ten (10) years, or both.

94-8-113. **Mistreating Prisoners.**

(1) A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, he purposely or knowingly:

(a) assaults or otherwise injures a prisoner; or

(b) intimidates, threatens, endangers or withholds reasonable necessities from the prisoner with the purpose to obtain a confession from him, or for any other purpose; or

(c) violates any civil right of a prisoner.

(2) A person convicted of the offense of mistreating prisoners shall be removed from office or employment and imprisoned in the state prison for a term not to exceed ten (10) years.

94-8-114. **Privacy In Communications.**

(1) A person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) Communicates with any person by telephone with the intent to terrify, intimidate, threaten, harass, annoy or offend, or use any obscene, lewd or profane language or suggest any lewd or lascivious act, or threaten to inflict injury or physical harm to the person or property of any person.

(b) Uses a telephone to attempt to extort money or any other thing of value from any person, or to disturb by repeated telephone calls the peace, quiet or right of privacy of any person at the place where the telephone call or calls were received. The

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use of obscene, lewd or profane language or the making of a threat or lewd or lascivious suggestions shall prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy or offend.

(c) Records or causes to be recorded by use of any hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) shall not apply to duly elected or appointed public officials or employees when such transcription or recording is done in the performance of official duty; nor to persons speaking at public meetings or persons given warning of such recording.

(d) Attempts by means of any machine, instrument, contrivance, or in any other manner, reads, or attempts to read any other manner, reads, or attempts to read any message or learn the contents thereof, while the same is being sent over any telegraph line, or learns or attempts to learn the contents of any message, whilst the same is in any telegraph office or is being received thereat or sent therefrom, or who uses or attempts to use, or communicate to others, any information so obtained.

(e) Discloses the contents of a telegraphic message or any part thereof, addressed to another person without the permission of such person, unless directed to do so by the lawful order of a court.

(f) Opens or reads or causes to be read any sealed letter not adressed to himself, without being authorized to do so by either the writer of such letter or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letters knowing the same to have been unlawfully opened.

(2) A person convicted of the offense of violating the privacy in communications shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

Section 2. There is a new section to be numbered 41-118, R.C.M. 1947, which reads as follows:

41-118. **Deceived Employees—Action For Damages.**

(1) No one doing business in this state shall induce, influence, persuade, or engage workmen to change from one place to another in this state, through or by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, or the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees, at the time of, or immediately prior to, such engagement. Failure to state in any advertisement,

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proposal, or contract for the employment of workmen that there is a strike, lockout, or other labor trouble at the place of the proposed employment, when in fact such strike, lockout, or other trouble then actually exists at such place, shall be deemed a false advertisement and misrepresentation for the purpose of this section.

(2) Any workman influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) of this section has a right of action for recovery of all damages that he had sustained in consequence of the deception, misrepresentation, or false advertising used to induce him to change his place of employment, against anyone directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorneys' fees to be fixed by the court and taxed as costs in any judgment recovered.

Section 3. Section 95-506, R.C.M. 1947, is amended to read as follows:

"95-506. **Determination of fitness to proceed—effect of finding of unfitness—proceedings if fitness is regained.** (a) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed pursuant to section 95-505, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the parties shall have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(b) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (c) of this section, and the court shall commit him to custody of the superintendent of the Montana state hospital, to be placed in an appropriate institution of the state department of public institutions for so long as such unfitness shall endure. When the court, on its own motion or upon the application of the superintendent of the Montana state hospital, or the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged, or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the de-

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fendant to be commited to an appropriate institution of the state department of public institutions.

(c) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(d) The expenses of sending the defendant to the custody of the superintendent of the Montana state hospital, to be placed in an appropriate institution of the state department of public institutions, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or the information filed; but the county may recover them from the estate of the defendant, if he has any, or from a town, city, or county bound to provide for and maintain him elsewhere."

Section 4. There is a new section to be numbered 95-719, R.C.M. 1947, which reads as follows:

95-719. **Stop and frisk.**

(1) A peace officer may stop any person he observes in circumstances that give the peace officer reasonable cause to suspect that the person has committed, is committing, or is about to commit an offense involving the use or attempted use of force against the person or theft, damage or destruction of property if the stop is reasonably necessary to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person.

(2) A peace officer may stop any person he finds near the scene of an offense that the peace officer has reasonable cause to suspect has just been committed if:

(a) the peace officer has reasonable cause to suspect that the person has knowledge of material aid to the investigation of the offense; or

(b) the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.

(3) A peace officer may stop any person in connection with an offense that the peace officer has probable cause to believe has been committed if:

(a) the offense is a felony involving the use or the attempted use of force against a person or theft, damage, or destruction of property; and

(b) the peace officer has reasonable cause to suspect the person committed the felony; and

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(c) the stop is reasonably necessary to obtain or verify his identity to determine whether to arrest the person for the felony; or the peace officer has reasonable cause to suspect that the person was present at the scene of the offense, and the stop is reasonably necessary to obtain or verify the person's identity.

(4) A peace officer who has lawfully stopped a person under this section may:

(a) frisk that person and take other reasonable necessary steps for protection if the peace officer has reasonable cause to suspect that the person is armed and presently dangerous to the peace officer or another person present; and

(b) take possession of any object that the peace officer discovers during the course of the frisk if the peace officer has probable cause to believe the object is a deadly weapon.

(5) A peace officer who has lawfully stopped a person under this section may demand of the person his name and his present or last address.

(6) A peace officer who has lawfully stopped a person under this section shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that he is a peace officer and that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation the person will be released unless he is arrested.

(7) After the authorized purpose of the stop has been accomplished or thirty (30) minutes have elapsed, whichever occurs first, the peace officer shall allow the person to go unless he has arrested the person.

Section 5. There is a new section to be numbered 95-1507, R.C.M. 1947, which reads as follows:

95-1507. **Sentence Of Imprisonment For Persistent Felony Offender.**

(1) A persistent felony offender is an offender who has been previously convicted of a felony and the present offense is a second felony committed on a different occasion than the first.

(2) A persistent felony offender shall be imprisoned in the state prison for a term of not less than five (5) years nor more than one hundred (100) years providing:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence

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to a term of imprisonment in excess of one (1) year could have been imposed; and

(b) less than five (5) years have elapsed between the commission of the present offense and either,

(i) the previous felony conviction or

(ii) the offenders released on parole or otherwise from a prison or other commitment imposed as a result of the previous felony conviction; and

(c) the offender was more than twenty-one (21) years old at the time of the commission of the new offense.

(3) A previous felony conviction shall not be considered for the purpose of sentencing under this section if the offender has been pardoned on the grounds of innocence, or if the conviction had been set aside in any post conviction hearing.

Section 6. There is a new section to be numbered 95-1711, R.C.M. 1947, which reads as follows:

95-1711. **Effect Of Former Prosecution And Multiple Prosecution.**

(1) Definition of terms.

(a) The term "same transaction" includes conduct consisting of:

(i) a series of acts or omissions motivated by a purpose to accomplish a criminal objective, and necessary or incidental to the accomplishment of that objective; or

(ii) a series of acts or omissions motivated by a common purpose or plan and which result in the repeated commission of the same offense or affect the same person or the same persons or the property thereof.

(b) An offense is an "included offense" when:

(i) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(ii) it consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or

(iii) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

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(2) Method of prosecution when conduct constitutes more than one offense. When the same transaction may establish the commission of more than one offense, a person charged with such conduct may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(a) one offense is included in the other; or

(b) one offense consists only of a conspiracy or other form of preparation to commit the other; or

(c) inconsistent findings of fact are required to establish the commission of the offenses;

(d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(e) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, and unless the law provides that the specific periods of such conduct constitute separate offenses.

(3) When prosecution barred by former prosecution. Provided the offenses, if more than one, were known to the attorney prosecuting upon sufficient evidence to justify the filing of an information or the issuance of a warrant of arrest and were consummated prior to the original charge, and provided the jurisdiction and venue of the several offenses lie in a single court, a prosecution based upon the same transaction as a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense than the offense charged which is subsequently set aside in an acquittal of the greater inclusive offense that was charged.

(b) The former prosecution was terminated, after a complaint had been filed on a misdemeanor charge, after an information had been filed or an indictment found on a felony charge, by a final order of judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(c) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in:

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(i) a judgment of conviction which has not been reversed or vacated; or

(ii) a verdict of guilty which has not been set aside and which is capable of supporting a judgment, so long as failure to enter judgment was for a reason other than a motion of the defendant; or

(iii) a plea of guilty accepted by the court, so long as failure to enter judgment was for a reason other than a motion of the defendant.

(d) The former prosecution was improperly terminated. Except as provided in this subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict. Termination under any of the following circumstances is not improper:

(i) the defendant consents to the termination or waives his right to object to the termination; or

(ii) the trial court, in the exercise of its discretion, finds that the termination is necessary because:

(A) it is physically impossible to proceed with the trial in conformity with law; or

(B) there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law; or

(C) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state; or

(D) the jury is unable to agree upon a verdict; or

(E) false statements of a juror on voir dire prevent a fair trial.

(4) Former prosecution in another jurisdiction—when a bar. When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state or of two courts of separate and/or concurrent jurisdiction in this state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this state under the following circumstances:

(a) The first prosecution resulted in an acquittal or in a conviction as defined in subsection (3) and the subsequent prosecution is based on an offense arising out of the same transaction.

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(b) The former prosecution was terminated, after the complaint has been filed on a misdemeanor charge, after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

(5) Former prosecution before court lacking jurisdiction or when fraudulently procured by the defendant. A prosecution is not a bar within the meaning of subsections (3) and (4) under any of the following circumstances:

(a) the former prosecution was before a court which lacked jurisdiction over the defendant or the offenses; or

(b) the former prosecution was procured by the defendant without the knowledge of the proper prosecuting officer or with the purpose of avoiding the sentence which might otherwise be imposed; or

(c) the former prosecution resulted in a judgment of conviction which was held invalid in any post-conviction hearing.

Section 7. There is a new section to be numbered 95-1807, R.C.M. 1947, which reads as follows:

95-1807. **Compelling Testimony: Immunity From Prosecution.**

Before or during trial in any judicial proceeding a justice of the supreme court or judge of the district court, upon request by the attorney prosecuting or counsel for the defense, may require a person to answer any question or produce any evidence that may incriminate him. If a person is required to give testimony or produce evidence, in accordance with this section, in any investigation or proceeding he cannot be prosecuted or subjected to any penalty or forfeiture, other than a prosecution or action for perjury or contempt, for or on account of any transaction, matter or thing concerning which he testified or produced evidence.

Section 8. There is a new section to be numbered 95-1808, R.C.M. 1947, which reads as follows:

95-1808. **"Witness" And "State" Defined.** "Witness" as used in 95-1809 through 95-1811, R.C.M. 1947, shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding. The word "state" shall include any territory of the United States and District of Columbia.

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Section 9. There is a new section to be numbered 95-2227, R.C.M. 1947, which reads as follows:

95-2227. **Effect Of Conviction.**

(1) Conviction of any offense shall not deprive the offender of any civil or constitutional rights except as they shall be specifically enumerated by the sentencing judge as necessary conditions of the sentence directed toward the objectives of rehabilitation and the protection of society.

(2) No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.

(3) When a person has been deprived of any of his civil or constitutional rights by reason of conviction for an offense and his sentence has expired or he has been pardoned he shall be restored to all civil rights and full citizenship, the same as if such conviction had not occurred.

Section 10. There is a new section to be numbered 95-2228, R.C.M. 1947, which reads as follows:

95-2228. **Fines, Costs And Forfeitures, How Disposed Of.** All fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue, if not otherwise provided by law, must be paid to the county treasurer of the county in which the court is held and by him credited as provided by law. If the said fine or forfeiture is paid to the county treasurer at the time of such payment there shall be filed with the county treasurer, a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action, which statement shall give the title of the cause and be subscribed by the person or officer making such payment.

Section 11. There is a new section to be numbered 95-2229, R.C.M. 1947, which reads as follows:

95-2229. **Traffic Fines Collected From Juvenile Offenders — Disposition.**

All fines collected by the district courts from children under eighteen (18) years of age for unlawful operation of motor vehicles resulting from traffic summonses issued by the peace officers of the cities, counties, or by highway patrolmen, together with that portion of the fines which is specified in section 75-7903 shall be

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retained by the county treasurer of the county in which the offense occurred and at the end of each month distributed as follows:

(a) fines collected as the result of summones issued by city police officers shall be distributed to the city in which the police officer is employed, and credited to the city general fund;

(b) fines collected as the result of summonses issued by county peace officers shall be retained by the county treasurer and credited to the county road fund;

(c) fines collected as the result of summonses issued by state highway patrolmen shall be paid to the state treasurer of Montana and by him credited to the general fund of the state;

(d) that portion of the fines, as provided for in section 75-7903, shall be paid to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund.

Section 12. There is a new section to be numbered 95-3004, R.C.M. 1947, which reads as follows:

95-3004. **The Burden In A Homicide Trial.**

(a) In a homicide trial, before an extrajudicial confession may be admitted into evidence, the state must introduce independent evidence tending to establish the death, and that the death was caused by a criminal agency.

(b) In a deliberate homicide, knowledge or purpose may be inferred from the fact that the accused committed a homicide and no circumstances or mitigation, excuse or justification appear.

Section 13. There is a new section to be numbered 95-3012, R.C.M. 1947, which reads as follows:

95-3012. **Testimony Of Person Legally Accountable.** A conviction cannot be had on the testimony of one responsible or legally accountable for the same offense, as defined in section 94-2-106, unless he is corroborated by other evidence, which in itself, and without the aid of the testimony of the one responsible or legally accountable for the same offense, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, it merely shows the commission of the offense, or the circumstances thereof.

Section 14. There is a new chapter entitled Chapter 31 which reads as follows:

CHAPTER 31: UNIFORM CRIMINAL EXTRADITION ACT

95-3101. **Definitions.** Where appearing in this act, the term "governor" includes any person performing the functions of gov-

ernor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state. The term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

95-3102. **Fugitives From Justice—Duty Of Governor.** Subject to the provisions of this act, the provisions of the constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

95-3103. **Demand—Form.** No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, except in cases arising under section 95-3106, and accompanied by a copy of the indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, judgement of conviction or sentence must be authenticated by the executive authority making the demand.

95-3104. **Investigation By Governor.** When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

95-3105. **Extradition Of Persons Imprisoned Or Awaiting Trial In Another State Or Who Have Left The Demanding State Under Compulsion.** When it is desired to have returned to this

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state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the governor of any other state any person in this state who is charged in the manner provided in section 95-3123 with having violated the laws of the state whose governor is making the demand, even though such person left the demanding state involuntarily.

95-3106. **Extradition Of Persons Not Present In Demanding State At Time Of Commission Of Crime.** The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 95-3103 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

95-3107. **Issuance Of Warrant Of Arrest By Governor — Recitals Therein.** If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

95-3108. **Execution Of Warrant—Manner And Place Thereof.** Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this act to the duly authorized agent of the demanding state.

95-3109. **Authority Of Arresting Officer.** Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

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95-3110. **Rights Of Accused Persons—Application For Writ Of Habeas Corpus.** No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall be first taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and what he has the right to demand and procure legal councel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

95-3111. **Penalty For Noncompliance With Preceding Section.** Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in willful disobedience of the last section, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one thousand dollars ($1,000) or be imprisoned not more than six (6) months, or both.

95-3112. **Confinement Of Accused In Jail When Necessary.** The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person, however, being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evi-

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dence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

95-3113. **Arrest Of Accused Before Making Of Requisition.** Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and except in cases arising under section 95-3106 with having fled from justice, or, with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 95-3106, has fled from justice, or with having been convicted of a crime in that state and having escaped from bail, probation, or parole and is believed to be in this state, the judge or magistrate shall issue a warrant to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer charge or complaint and affidavit and a certified copy of the sworn charge or complaint or affidavit upon which the warrant is issued shall be attached to the warrant.

95-3114. **Arrest Of Accused Without Warrant Therefor.** The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one (1) year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter this answer shall be heard as if he had been arrested on a warrant.

95-3115. **Commitment To Await Requisition—Bail.** If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and, except, in cases arising under section 95-3106 that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty (30) days and specified in

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the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

95-3116. **Bail—In What Cases—Conditions Of Bond.** Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the governor of this state.

95-3117. **Extension Of Time Of Commitment Adjournment.** If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge him or may recommit him for further period of sixty (60) days or a supreme court justice or county judge may again take bail for his appearance and surrender, as provided in section 95-3116, but with a period not to exceed sixty (60) days after the date of such new bond or undertaking.

95-3118. **Bail—When Forfeited.** If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

95-3119. **Persons Under Criminal Prosecution In This State At Time Of Requisition.** If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

95-3120. **Guilt Or Innocence Of Accused, When Inquired Into.** The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor, or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

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95-3121. **Alias Warrant Of Arrest.** The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

95-3122. **Fugitives From This State—Duty Of Governors.** Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the chief executive of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

95-3123. **Application For Issuance Of Requisition—By Whom Made—Contents.** I. When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

II. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which the escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment

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of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the government indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

95-3124. **Fugitives From This State—Accounts.** When the governor of this state, in the exercise of the authority conferred by section 2, article IV, of the constitution of the United States, or by the laws of this state, demands from the executive authority of any state of the United States, or of any foreign government, the surrender to the authorities of this state of a fugitive from justice, who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners, and paid out of the state treasury.

95-3125. **No Fee To Be Paid To Public Officer Procuring Surrender.** No compensation, fee or reward of any kind can be paid to or received by a public officer of this state, or other person, for a service rendered in procuring from the governor the demand mentioned in section 95-3124 or for the surrender of the fugitive or for conveying him to this state, or detaining him therein, except as provided for in such section.

95-3126. **Receiving Fee For Services In Arresting Fugitives.** Every person who violates any of the provisions of section 95-3125 is guilty of a misdemeanor.

95-3127. **Immunity From Service Of Process In Certain Civil Actions.** A person brought into this state on, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceedings, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

95-3128. **Written Waiver Of Extradition Proceedings.** Any person of this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in sections 95-3107 and 95-3108 and all other procedure incidental to extradition

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proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 95-3110.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality, to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

95-3129. **Nonwaiver By This State.** Nothing in this act contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person from crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, a sentence or punishment for any crime committed within this state, nor shall any proceedings had under this act which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

95-3130. **No Immunity From Other Criminal Prosecutions While In This State.** After a person has been brought back to this state by extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

Section 15. Section 25-222, R.C.M. 1947, is amended to read as follows:

"25-222. **Penalty for false oath.** Every person who takes a false oath, under the provisions of this chapter, is punishable as provided in *sections 94-7-202 and 94-7-203.*"

Section 16. Section 25-223, R.C.M. 1947, is amended to read as follows:

"25-223. **Penalty for failure to pay over fees.** Every officer

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who fails or refuses to pay over any fees collected by him to the county treasurer, or fails to collect the same, as provided by this chapter, is *guilty of a felony.*"

Section 17. Section 25-224, R.C.M. 1947, is amended to read as follows:

"25-224. **Penalty for making false report.** Every officer who makes a false report of the fees received by him is guilty of a felony."

Section 18. Section 25-225, R.C.M. 1947, is amended to read as follows:

"25-225. **Penalty for sheriff falsely representing his mileage.** Every sheriff who falsely represents to the board of county commissioners or board of examiners his actual traveling expenses in the performance of any official duty, or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of such duty, *is guilty of a misdemeanor.*"

Section 19. Section 25-229, R.C.M. 1947, is amended to read as follows:

"25-229. **Sheriff falsely representing his expenses for boarding prisoners.** Every sheriff who falsely represents to the board of county commissioners the actual expenses of boarding prisoners, or for furnishing food and supplies therefor, or for any service rendered in connection therewith, or presents to said board false items in a claim or false vouchers, or makes any profit whatever out of the board or keeping of prisoners in his custody, and every person who gives a false item or false voucher to be used by such sheriff in any claim against the county before such board, *is guilty of a misdemeanor.*"

Section 20. Section 69-1511, R.C.M. 1947, is amended to read as follows:

"69-1511. **Certificate of inspection—penalty for wrongfully issuing certificates of inspection or licenses.** In making an inspection of the boilers and machinery herein provided for, the inspectors may not jointly or separately, but the inspector or assistant inspector making such inspection must in all cases certify the same under seal of the inspector of boilers and safety. Any inspector or assistant inspector who willfully certifies regarding any boilers or their attachments, or grants a license to any person to act as engineer contrary to the provisions of this article, *is guilty of a misdemeanor.* All certificate of inspection, operating certificates and engineer's licenses must be displayed in a conspicuous place in the boiler room."

Section 21. Section 66-1607, R.C.M. 1947, is amended to read as follows:

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"66-1607. **Penalties.** The penalties for a violation of any of the provisions of this chapter *shall be a misdemeanor.*"

Section 23. Section 85-105, R.C.M. 1947, is amended to read as follows:

"85-105. **Penalties.** The penalty for forging, counterfeiting, or unlawful using of trade-marks *is a misdemeanor.*"

Section 23. Section 94-1109, R.C.M. 1947, is renumbered 51-405 and is amended to read as follows:

"*51-405.* **Penalty for violation of law.** Any person, firm, or corporation violating the provisions of section *51-403,* whether as principal or agent, shall, upon conviction thereof, be fined not less than two hundred dollars *($200)* nor more than ten thousand dollars *($10,000)* for each offense."

Section 24. Section 94-1113, R.C.M. 1947, is renumbered 51-409, and is amended to read as follows:

"*51-409.* **Penalty for violation of law.** Any person, firm, or corporation violating the provisions of section *51-407,* whether as principal or agent, shall, upon conviction thereof, be fined not less than two hundred dollars *($200)* nor more than ten thousand dollars *($10,000)* for each offense."

Section 25. Section 94-1460, R.C.M. 1947, is renumbered 23-4760, and is amended to read as follows:

"*23-4760.* **Court having jurisdiction of proceedings.** An application for filing a statement, payment of a claim, or correction of an error or false recital in a statement filed, or an action or proceeding to annul and set aside the election of any person declared elected to an office, or to remove or deprive any person of his office for an offense mentioned in this act, or any petition to excuse any person or candidate in accordance with the power of the court to excuse as provided in section *23-4757,* must be made or filed in the district court of the county in which the certificate of his nomination as a candidate for the office to which he is declared nominated or elected is filed, or in which the incumbent resides."

Section 26. Section 94-3104, R.C.M. 1947, is renumbered 94-8-204, and is amended to read as follows:

"*94-8-204.* **Presumption of possession or use for offensive or aggressive purpose.** Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(a) When the machine gun is on premises not owned or rented, for bona fide permanent residence or business occupancy,

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by the person in whose possession the machine gun may be found; or

(b) When in the possession of, or used by, an unnaturalized foreign-born person, or a person who has been convicted of a crime of violence in any court of record, state or federal, of the United States of America, its territories or insular possessions; or

(c) When the machine gun is of the kind described in section *94-8-208* and has not been registered as in said section required; or

(d) When empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of use in the machine gun are found in the immediate vicinity thereof."

Section 27. Section 94-4209, R.C.M. 1947, is renumbered 80-1912, and is amended to read as follows:

"*80-1912.* **Expense of trial for escape.** Whenever a trial takes place of any person under any of the provisions of *section 94-7-306,* and whenever a prisoner in the state prison shall be tried for any crime committed therein, the county clerk of the county where such trial is had shall make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such prisoner, properly certified by a district judge of said county, which statement shall be sent to the board of state prison commissioners for their approval; and after such approval, said board must cause the amount of such costs to be paid out of money appropriated for the support of the state prison to the county treasurer of the county where such trial was had."

Section 28. Section 94-9846, R.C.M. 1947, is renumbered 95-3228, and is amended to read as follows:

"*95-3228.* **When publication not necessary.** No publication need be made as provided in sections *95-3224, 95-3225, and 95-3226,* in the following cases:

1. When there is imminent danger of the death of the person convicted or imprisoned.

2. When the term of imprisonment of the applicant is within ten (10) days of its expiration."

Section 29. The following sections of the Revised Codes of Montana, 1947, are not repealed but are renumbered as follows:

94-401 is renumbered 94-5-611; 94-402 is renumbered 94-5-612; 94-808 is renumbered 16-3607; 94-1104 is renumbered 51-401; 94-1105 is renumbered 51-402; 94-1107 is renumbered 51-403; 94-1108 is renumbered 51-404; 94-1110 is renumbered 51-406; 94-1111 is renumbered 51-407; 94-1112 is renumbered 51-408;

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94-1114 is renumbered 51-410; 94-1115 is renumbered 51-411; 94-1116 is renumbered 51-412; 94-1117 is renumbered 51-413; 94-1118 is renumbered 51-414; 94-1401 is renumbered 23-4701; 94-1402 is renumbered 23-4702; 94-1403 is renumbered 23-4703; 94-1404 is renumbered 23-4704; 94-1405 is renumbered 23-4705; 94-1406 is renumbered 23-4706; 94-1407 is renumbered 23-4707; 94-1408 is renumbered 23-4708; 94-1409 is renumbered 23-4709; 94-1410 is renumbered 23-4710; 94-1411 is renumbered 23-4711; 94-1412 is renumbered 23-4712; 94-1413 is renumbered 23-4713; 94-1414 is renumbered 23-4714; 94-1415 is renumbered 23-4715; 94-1416 is renumbered 23-4716; 94-1417 is renumbered 23-4717; 94-1418 is renumbered 23-4718; 94-1419 is renumbered 23-4719; 94-1420 is renumbered 23-4720; 94-1421 is renumbered 23-4721; 94-1422 is renumbered 23-4722; 94-1423 is renumbered 23-4723; 94-1424 is renumbered 23-4724; 94-1425 is renumbered 23-4725; 94-1426 is renumbered 23-4726; 94-1427 is renumbered 23-4727; 94-1428 is renumbered 23-4728; 94-1429 is renumbered 23-4729; 94-1430 is renumbered 23-4730; 94-1431 is renumbered 23-4731; 94-1432 is renumbered 23-4732; 94-1433 is renumbered 23-4733; 94-1434 is renumbered 23-4734; 94-1435 is renumbered 23-4735; 94-1436 is renumbered 23-4736; 94-1437 is renumbered 23-4737; 94-1438 is renumbered 23-4738; 94-1439 is renumbered 23-4739; 94-1440 is renumbered 23-4740; 94-1441 is renumbered 23-4741; 94-1442 is renumbered 23-4742; 94-1443 is renumbered 23-4743; 94-1444 is renumbered 23-4744; 94-1445 is renumbered 23-4745; 94-1446 is renumbered 23-4746; 94-1447 is renumbered 23-4747; 94-1448 is renumbered 23-4748; 94-1449 is renumbered 23-4749; 94-1450 is renumbered 23-4750; 94-1451 is renumbered 23-4751; 94-1452 is renumbered 23-4752; 94-1453 is renumbered 23-4753; 94-1454 is renumbered 23-4754; 94-1455 is renumbered 23-4755; 94-1456 is renumbered 23-4756; 94-1457 is renumbered 23-4757; 94-1458 is renumbered 23-4758; 94-1459 is renumbered 23-4759; 94-1462 is renumbered 23-4761; 94-1463 is renumbered 23-4762; 94-1464 is renumbered 23-4763; 94-1465 is renumbered 23-4764; 94-1466 is renumbered 23-4765; 94-1467 is renumbered 23-4766; 94-1468 is renumbered 23-4767; 94-1469 is renumbered 23-4768; 94-1470 is renumbered 23-4769; 94-1471 is renumbered 23-4770; 94-1472 is renumbered 23-4771; 94-1473 is renumbered 23-4772; 94-1474 is renumbered 23-4773; 94-1475 is renumbered 23-4774; 94-1476 is renumbered 23-4775; 94-2322 is renumbered 15-22-141; 94-2323 is renumbered 15-22-142; 94-2324 is renumbered 15-22-143; 94-2325 is renumbered 15-22-144; 94-2401 is renumbered 94-8-401; 94-2402 is renumbered 94-8-402; 94-2403 is renumbered 94-8-403; 94-2404 is renumbered 94-8-404; 94-2405 is renumbered 94-8-405; 94-2406 is renumbered 94-8-406; 94-2407 is renumbered 94-8-407; 94-2408 is renumbered 94-8-408; 94-2409 is renumbered

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94-8-409; 94-2410 is renumbered 94-8-410; 94-2411 is renumbered 94-8-411; 94-2412 is renumbered 94-8-412; 94-2413 is renumbered 94-8-413; 94-2414 is renumbered 94-8-414; 94-2415 is renumbered 94-8-415; 94-2416 is renumbered 94-8-416; 94-2417 is renumbered 94-8-417; 94-2418 is renumbered 94-8-418; 94-2419 is renumbered 94-8-419; 94-2420 is renumbered 94-8-420; 94-2421 is renumbered 94-8-421; 94-2422 is renumbered 94-8-422; 94-2423 is renumbered 94-8-423; 94-2424 is renumbered 94-8-424; 94-2426 is renumbered 94-8-425; 94-2427 is renumbered 94-8-426; 94-2428 is renumbered 94-8-427; 94-2429 is renumbered 94-8-428; 94-2430 is renumbered 94-8-429; 94-2431 is renumbered 94-8-430; 94-2432 is renumbered 94-8-431; 94-3001 is renumbered 94-8-301; 94-3002 is renumbered 94-8-302; 94-3003 is renumbered 94-8-303; 94-3004 is renumbered 94-8-304; 94-3005 is renumbered 94-8-305; 94-3006 is renumbered 94-8-306; 94-3007 is renumbered 94-8-307; 94-3008 is renumbered 94-8-308; 94-3009 is renumbered 94-8-309; 94-3010 is renumbered 94-8-310; 94-3011 is renumbered 94-8-311; 94-3101 is renumbered 94-8-201; 94-3102 is renumbered 94-8-202; 94-3103 is renumbered 94-8-203; 94-3105 is renumbered 94-8-205; 94-3106 is renumbered 94-8-206; 94-3107 is renumbered 94-8-207; 94-3108 is renumbered 94-8-208; 94-3110 is renumbered 94-8-209; 94-3522 is renumbered 46-1720; 94-3525 is renumbered 94-8-210; 94-3526 is renumbered 94-8-211; 94-3527 is renumbered 94-8-212; 94-3527.1 is renumbered 94-8-213; 94-3529 is renumbered 94-8-214; 94-3530 is renumbered 94-8-215; 94-3531 is renumbered 94-8-216; 94-3532 is renumbered 94-8-217; 94-3555 is renumbered 41-1325; 94-3567 is renumbered 46-3001; 94-3568 is renumbered 46-3002; 94-3569 is renumbered 46-3003; 94-3578 is renumbered 94-8-218; 94-3578.1 is renumbered 94-8-219; 94-3578.2 is renumbered 94-8-220; 94-3579 is renumbered 94-8-221; 94-3580 is renumbered 94-8-222; 94-35-109 is renumbered 72-671; 94-35-172 is renumbered 46-247; 94-35-173 is renumbered 46-248; 94-35-174 is renumbered 72-507; 94-35-184 is renumbered 94-8-223; 94-35-185 is renumbered 94-8-224; 94-35-186 is renumbered 94-8-225; 94-35-200 is renumbered 46-3004; 94-35-203 is renumbered 72-672; 94-35-204 is renumbered 46-3005; 94-35-205 is renumbered 46-3006; 94-35-206 is renumbered 46-3007; 94-35-207 is renumbered 46-3008; 94-35-270 is renumbered 3-234; 94-35-271 is renumbered 3-235; 94-35-271.1 is renumbered 3-236; 94-35-271.2 is renumbered 3-237; 94-35-271.3 is renumbered 3-238; 94-35-273 is renumbered 94-8-226; 94-5401 is renumbered 95-2801; 94-5402 is renumbered 95-2802; 94-5403 is renumbered 95-2803; 94-5404 is renumbered 95-2804; 94-5405 is renumbered 95-2805; 94-5406 is renumbered 95-2006; 94-5407 is renumbered 95-2807; 94-5408 is renumbered 95-2808; 94-5409 is renumbered 95-2809; 94-5410 is renumbered 95-2810; 94-5411 is renumbered 95-2811; 94-5412 is renumbered 95-2812; 94-5413 is renumbered 95-2813; 94-5414 is renumbered 95-2814; 94-5415 is renumbered 95-2815; 94-5416 is

renumbered 95-2816; 94-5417 is renumbered 95-2817; 94-5418 is renumbered 95-2818; 94-5419 is renumbered 95-2819; 94-7203 is renumbered 95-2901; 94-7204 is renumbered 95-2902; 94-7206 is renumbered 95-1504(d); 94-7207 is renumbered 95-1504(e); 94-7209 is renumbered 95-3001; 94-7210 is renumbered 95-3002; 94-7901 is renumbered 95-3201; 94-7902 is renumbered 95-3202; 94-8801 is renumbered 95-3010; 94-8802 is renumbered 95-3011; 94-9002 is renumbered 95-1809; 94-9003 is renumbered 95-1810; 94-9004 is renumbered 95-1811; 94-9821 is renumbered 95-3203; 94-9822 is renumbered 95-3204; 94-9823 is renumbered 95-3205; 94-9824 is renumbered 95-3206; 94-9825 is renumbered 95-3207; 94-9826 is renumbered 95-3208; 94-9827 is renumbered 95-3209; 94-9828 is renumbered 95-3210; 94-9829 is renumbered 95-3211; 94-9830 is renumbered 95-3212; 94-9831 is renumbered 95-3213; 94-9832 is renumbered 95-3214; 94-9833 is renumbered 95-3215; 94-9834 is renumbered 95-3216; 94-9835 is renumbered 95-3217; 94-9836 is renumbered 95-3218; 94-9837 is renumbered 95-3219; 94-9838 is renumbered 95-3220; 94-9839 is renumbered 95-3221; 94-9840 is renumbered 95-3222; 94-9841 is renumbered 95-3223; 94-9842 is renumbered 95-3224; 94-9843 is renumbered 95-4225; 94-9844 is renumbered 95-3226; 94-9845 is renumbered 95-3227; 94-9847 is renumbered 95-3229; 94-9848 is renumbered 95-3230; 94-9849 is renumbered 95-3231; 94-9850 is renumbered 95-3232; 94-9851 is renumbered 95-3233; 94-701-1 is renumbered 95-1812; 94-1101-1 is renumbered 95-3131; 94-1101-2 is renumbered 95-3132; 94-1101-3 is renumbered 95-3133; 94-1101-4 is renumbered 95-3134; 94-1101-5 is renumbered 95-3135; and 94-1101-6 is renumbered 95-3136.

Section 30. Section 95-2006, R.C.M. 1947, is repealed and there is substituted a new section to be numbered 95-2006 which reads as follows:

95-2006. **Verdict.**

(a) **Return.** The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter, or cause to be entered in the minutes. The verdict of the jury must be unanimous.

(b) **Several defendants.** When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

(c) **Poll of jury.** When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not a unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

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(d) **Discharge of jury.** The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

Section 31. Section 95-2206, R.C.M. 1947, is repealed and there is substituted the following sections to be numbered 95-2206, 95-2206.1, 95-2206.2, 95-2206.3, and 95-2206.4 which reads as follows:

95-2206. **Sentence.**

Whenever any person has been found guilty of a crime or offense upon a verdict or a plea of guilty the court may:

(1) Defer imposition of sentence for a period not to exceed one (1) year for any misdemeanor; for a period not to exceed three (3) years for any felony. The sentencing judge may impose upon the defendant any reasonable restriction or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(a) jail base release;

(b) jail time not to exceed ninety (90) days;

(c) conditions for probation;

(d) restitution;

(e) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(f) any combination of the above.

(2) Suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include:

(a) jail base release;

(b) jail time not to exceed (90) days;

(c) conditions for probation;

(d) restitution;

(e) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(f) any combination of the above.

If any restrictions or conditions are violated, any elapsed time, except jail time, shall not be a credit against the sentence, unless the court shall otherwise order.

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(3) Impose a fine as provided by law for the offense.

(4) Commit the defendant to a correctional institution with or without fine by law for the offense.

(5) Impose any combination of subsections (2), (3), or (4) above.

(6) The district court may also impose any of the following restrictions or conditions on the above sentence which it deems necessary to obtain the objective of rehabilitation and the protection of society:

(a) prohibit the defendant the right to hold public office;

(b) prohibit the defendant the right to own or carry a dangerous weapon;

(c) prohibit freedom of association;

(d) prohibit freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation or the protection of society.

(7) The judge in the justice court shall not have the authority to restrict an individual's rights as enumerated in subsection (6).

Any judge who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence or deferred imposition of sentence to revoke such suspension or impose sentence and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law, or retain such jurisdiction with this court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing.

95-2206.1. **Sentence To Death.**

When a person is convicted of an offense punishable by death or imprisonment, the court may sentence the offender to death or imprisonment.

95-2206.2. **When No Place Of Imprisonment Is Specified.**

When a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, a sentence not to exceed one (1) year shall be to the county jail.

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95-2206.3. **When No Penalty Is Specified.**

The court in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided, or if the offense is designated a misdemeanor and no penalty is otherwise provided, may sentence the offender to a term of imprisonment not to exceed six (6) months in the county jail or a fine not to exceed five hundred dollars ($500), or both. Where statutes outside the criminal code refer to a subsequently repealed section in title 94 for a penalty, then the penalty shall be a fine not to exceed five hundred dollars ($500) or imprisonment in the county jail for a term not to exceed six (6) months, or both.

95-2206.4. **When No Felony Is Specified.**

The court in imposing sentence upon an offender convicted of an offense which is designated as a felony, and no penalty is otherwise provided, may sentence the offender for any term not to exceed ten (10) years in the state prison.

Section 32. Sections 94-101 through 94-103, 94-105 through 94-119, 94-201 through 94-206, 94-301 through 94-306, 94-501 through 94-506, 94-601 through 94-605, 94-701 through 94-705, 94-801 through 94-807, 94-809 through 94-811, 94-901 through 94-909, 4-1001 through 94-1011, 94-1101 through 94-1103, 94-1106, 94-1201 through 94-1209, 94-1301 through 94-1307, 94-1501 through 94-1519, 94-1601 through 94-1617, 94-1701 through 94-1707, 94-1801 through 94-1831, 94-1901 through 94-1904, 94-2001 through 94-2014, 94-2101 through 94-2104, 94-2202, 94-2301 through 94-2321, 94-2501 through 94-2515, 94-2601 through 94-2604, 94-2701 through 94-2726, 94-2801 through 94-2811, 94-2901 through 94-2919, 94-3109, 94-3111, 94-3202 through 94-3208, 94-3210, 94-3211, 94-3301 through 94-3344, 94-3401, 94-3402, 94-3501 through 94-3512, 94-3514 through 94-3521, 94-3523, 94-3524, 94-3528, 94-3533 through 94-3549, 94-3551 through 94-3554, 94-3556 through 94-3566, 94-3570 through 94-3572, 94-3574 through 94-3577, 94-3581 through 94-35-101, 94-35-104 through 94-35-108, 94-35-110 through 94-35-122, 94-35-124 through 94-35-134, 94-35-137 through 94-35-147, 94-35-149 through 94-35-151, 94-35-163 through 94-35-171, 94-35-175, 94-35-177 through 94-35-183, 94-35-187 through 94-35-198, 94-35-201, 94-35-202, 94-35-208 through 94-35-265, 94-35-269, 94-35-272, 94-35-274, 94-35-275, 94-3601 through 94-3619, 94-3701 through 94-3704, 94-3801 through 94-3813, 94-3901 through 94-3920, 94-4001 through 94-4005, 94-4101 through 94-4120, 94-4201 through 94-4208, 94-4301 through 94-4303, 94-4401 through 94-4427, 94-4501, 94-4502, 94-4601 through 94-4607, 94-4701 through 94-4715, 94-4718 through 94-4725, 94-4801, 94-4802, 94-4804, 94-4806, 94-4808, 94-4809, 94-5001 through 94-5005, 94-5101 through 94-5116, 94-5201, 94-5202, 94-5301 through 94-5314, 94-5501 through 94-5516, 94-5701 through 94-5706, 94-6414 through 94-6421, 94-6423

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through 94-6425, 94-6429, 94-6808.1 through 94-6808.5, 94-7208, 94-7211 through 94-7220, 94-7240, 94-7307, 94-8508 through 94-8510, 94-8803, 94-8804, 94-9001, 94-9005 through 94-9007, 94-9201 through 94-9214, 94-9307, 94-9901 through 94-9908, 94-401-1 through 94-401-3, 94-501-1 through 94-501-32, 94-801-1, 94-801-2, 94-1001-1 through 94-1001-11, 95-2006, 95-2206 R.C.M. 1947, and all acts and parts of acts in conflict herewith are repealed.

Section 33. The Montana Criminal Code and all other provisions of this act are effective January 1, 1974, and shall apply to all offenses alleged to have been committed on or after that date. The Montana Criminal Code and all other provisions of this act do not apply to offenses committed prior to its effective date and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this act were not in force. For the purpose of this section, an offense was committed prior to the effective date of this act if any of the elements of the offense occurred prior thereto.

Section 34. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 35. Section 26-110.1, R.C.M. 1947, is amended to read as follows:

"26-110.1. **Protection of private property by fish and game wardens—ex officio fire wardens.** It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections *94-6-102, 94-6-203* and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947."

Section 36. Section 26-110.2, R.C.M. 1947, is amended to read as follows:

"26-110.2. **Power of wardens in protection of private property.** State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of sections *94-6-102, 94-6-203* and 32-4410, R.C.M. 1947."

Approved: April 4, 1973.

CHAPTER NO. 514

An Act to Amend Sections 69-3502, 69-3503, 69-3504, 69-3504.1, 69-3505, 69-3506, 69-3508, 69-3508.1, 69-3508.2, 69-3510, 69-3512,

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69-3514, 69-3517, and 69-3518, R.C.M. 1947, All Relating to the Operation, Occupancy, Licensing and Certification of Motor Boats and Other Vessels; Providing for Disposition of Funds from Licensing and Fines Arising from Motor Boat Operation; Providing for Protection of Navigational Markers; Prescribing Penalties for Violation; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 69-3502, R.C.M. 1947, is amended to read as follows:

"69-3502. **Definitions.** As used in this act, unless the context clearly requires a different meaning:

(1) "Vessel": *means every description of watercraft,* unless otherwise defined by the fish and game commission of the state of Montana, other than a seaplane on the water, *used or* capable of being used as a means of transportation on water.

(2) "Motorboat" means any vessel propelled by machinery, *any motor or engine of any description,* whether or not such machinery, *motor or engine* is the principal source of propulsion, *including boats temporarily equipped with detachable motors or engines,* but shall not include a vessel which has a valid marine document issued by the *U.S. coast guard* of the United States government or any federal agency successor thereto.

(3) "Owner" means a person, other than a lien holder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(4) "Waters of this state" means any waters within the territorial limits of this state.

(5) "Person" means an individual, partnership, firm, corporation, association or other entity.

(6) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(7) The word "board" shall mean the fish and game commission of the state of Montana in all sections of this act, except for section 69-3504, in which section the word "board" shall mean the board of equalization of the state of Montana.

(8) "Certificate of number" means the certificate issued annually by the board of equalization to the owner of a motorboat,

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awarding such motorboat an identifying number and will contain such information as required.

(9) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(10) "License decals" mean the serially numbered license stickers issued annually by the board of equalization, and displayed as required by law.

(11) "Passenger" means every person carried on board a vessel other than:

(a) the owner or his representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(13) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.

(14) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions."

Section 2. Section 69-3503, R.C.M. 1947, is amended to read as follows:

"69-3503. **Operation of unnumbered motorboats prohibited.** Every motorboat on the waters of this state propelled by *motor or engine of any description of more than eight (8) horsepower* shall be *properly* numbered *and display valid license decals.* No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered *and displays valid license decals in accordance with this act,* in accordance with applicable federal law, or in accordance with a federally approved number-

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ing system of another state, unless (1) the certificate of number awarded to such motorboat is in full force and effect, and (2) the identifying number set forth in the certificate of number *and the valid license decals are* displayed on such motorboat."

Section 3. Section 69-3504, R.C.M. 1947, is amended to read as follows:

"69-3504. **Identification number.** (a) The owner of each motorboat requiring numbering by this state shall file an application for number with the board or its designated representative, on forms approved by the board. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of one dollar ($1). *Any alteration, change or false statement contained in the application for certificate of registration will render the certificate of number null and void.* Upon receipt of the application in approved form and certificate hereinabove referred to, the board shall enter the same upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner. *The number awarded must be painted* on or *attached* to each *outboard* side of the *forward half* of the motorboat, *or if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat for which it is issued. The number awarded shall read from left to right, in Arabic numerals, in block characters of good proportion, a minimum of three (3) inches in height, excluding border or trim, and of a color which shall contrast with the color of the background, and so maintained as to be clearly visible and legible. The number shall not be placed on the obscured underside of the flared bow where the angle is such that the numbers cannot be easily seen from another vessel or ashore. No numerals, letters or devices other than those used in connection with the identifying number issued shall be placed in the proximity of the identifying number, and no numerals, letters or devices which might interfere with the ready identification of the motorboat by its identifying number shall be carried as to interfere with the motorboat's identification.* The certificate of number shall be pocket size and shall be available *to federal, state or local law enforcement officers* at all *reasonable* times for inspection on the motorboat for which issued, whenever such motorboat is *on waters of this state, except boat liveries are not required to have the certificate of number on board each motorboat, except that a rental agreement must be carried on board livery motorboats in place of the certificate of number.*

(b) The numbering requirements of this act shall apply to motorboats operated by *dealers, manufacturers or their employees as follows:*

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(1) A dealer or manufacturer may apply directly to the board for one (1) identifying number and one (1) or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on a dealer's or manufacturer's boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer.

(2) The application for a dealer's or manufacturer's identifying number shall include the name of the dealer or manufacturer and the business address of the dealer or manufacturer. Each dealer or manufacturer shall have one (1) identifying number assigned to his business.

(3) An application for dealer's or manufacturer's identifying number and certificate of number shall be accompanied by the following fees:

(A) for the identifying number, first certificate of number, and set of license decals, five dollars ($5);

(B) for each additional certificate of number and set of license decals applied for in any application, two dollars ($2).

(4) The board shall issue certificates of number for identifying number awarded to a dealer or manufacturer in the same manner as provided in section 60-3504 (a), except that no boat shall shall be described in the certificate and each certificate shall state that the identifying number has been awarded to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on April 30 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number shall be displayed in the same manner as provided in section 69-3504 (a) of this act, except that the number may be temporarily attached, and that the last three (3) letters shall be "DLR" for dealer and "MFR" for manufacturer; these letters shall be included, respectively, in dealer or manufacturer identification numbers only.

(6) No person other than a dealer or manufacturer or an employee of a dealer or manufacturer shall display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) No dealer or manufacturer or employee of a dealer or manufacturer shall use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1) of this section.

(c) The owner of any motorboat already covered by a number in full force and effect, which has been awarded to it pursuant to

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then operative federal law or a federally approved numbering system of another state, shall record the number prior to operating the motorboat on the waters of this state in excess of the *sixty (60)* day reciprocity period provided for in section 69-3506(1) *of this act.* Such recordation shall be in the manner and pursuant to the procedure required for the award of number under subsection (a) of this section.

(d) Should the ownership of a motorboat change, *within a reasonable time* a new application form with fee shall be filed with the board and a new certificate of number shall be awarded in the same manner as provided for in an original award of number, provided further that the number assigned may be determined by the board.

(e) In the event that an agency of the United States government shall have in force an over-all system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this act by the board shall be in conformity therewith.

(f) The board may award any certificate of number directly or may authorize any person to act as agent for the awarding thereof. In the event that a person accepts such authorization, he may be assigned a block of numbers and certificates therefor which upon award, in conformity with this act and with any rules and regulations of the board shall be valid as if awarded directly by the board.

(g) All records of the board made or kept pursuant to this act shall be public records; provided that the board shall submit to the registrar of motor vehicles of this state, correct copies of all certificates of *number* issued pursuant to this act; and provided further that said *board* or registrar shall make said records immediately available to all law enforcement offices of this state.

(h) Every certificate of number *and the license decals* awarded pursuant to this act shall continue in full force and effect for a period not to exceed one (1) year, unless sooner terminated or discontinued in accordance with the provisions of this act. Certificates of number *and license decals shall show the date of expiration thereon and* may be renewed by the owner in the same manner provided for in the initial securing of the same. The board shall notify each owner of a registered *motorboat* of expiration of registration a reasonable time prior to expiration of registration.

(i) *Certificates* of number due *shall* expire *on April 30 of each* calendar year and *shall* no longer be of any force and effect unless renewed pursuant to this act.

(j) In event of transfer of ownership, the purchaser shall

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furnish the board notice of the acquisition of all or any part of his interest other than the creation of a security interest in a motorboat numbered in this state pursuant to subsections (a) and (b) of this section, or of the *loss, theft,* destruction or abandonment of such motorboat, within reasonable time thereof. Such transfer, *loss, theft,* destruction or abandonment shall terminate the certificate of number for such motorboat except that in the case of a *recovery from theft, or* transfer of a part interest which does not affect the owner's right to operate such motorboat, such *recovery or* transfer shall not terminate the certificate of number.

(k) Any holder of a certificate of number shall notify the board within reasonable time if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the board with his new address. The board may provide in its rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(l) No number other than the number *and license decal* awarded to a motorboat or granted reciprocity pursuant to this act, shall be painted, attached or otherwise displayed on either side of the *forward half* of such motorboat.

(m) Fees collected under the provision of this section shall be transmitted to the state treasurer who shall deposit the fees in the motorboat certificate identification account of an earmarked revenue fund. These fees shall be used only for the administration and enforcement of sections 69-3501 through 69-3518, R.C.M. 1947.

(n) An owner of a motorboat must notify the board, giving the motorboat's identifying number and the owner's name, within reasonable time, when that motorboat becomes documented as a vessel of the United States, is transferred, lost, destroyed, abandoned, frauded, or within sixty (60) days after change of state of principal use."

Section 4. Section 69-3504.1, R.C.M. 1947, is amended to read as follows:

69-3504.1. *License decals* **to be displayed.** (1) Every Montana boat numbered in accordance with the provisions of section 69-3504 shall be required to display *license* decals. For this purpose the state board of equalization, *upon receipt by said board of a certificate of tax of personal property showing payment of tax on the motorboat for the current year,* shall issue a pair of decals with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed

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by the state board of equalization, and shall be a color differing from the preceding year. *The license decal will be serially numbered and have the expiration date of April 30 of the appropriate year printed thereon. The style and design shall be prescribed by the board.*

(3) *License decals shall* be displayed *only in the following manner:*

One *valid license decal* on each side of the *forward half three (3) inches* aft of the *identifying numbers.''*

Section 5. Section 69-3505, R.C.M. 1947, is amended to read as follows:

"69-3505. **Equipment.** (1) Every *motorboat or* vessel shall have aboard:

(a) One *United States coast guard approved personal flotation device* in good and serviceable condition for each person on board, provided, *that any person who has not reached his twelfth birthday shall have a United States coast guard approved life preserver properly fastened to his person when occupying a motorboat or vessel under twenty-six (26) feet in length while such motorboat or vessel is in motion. The fish and game commission shall have the authority to designate waters and time of year on these waters where all persons aboard a motorboat or vessel must wear approved life preservers at all times.*

(b) When in operation *or at anchor or moored away from a docking facility between sunset and sunrise all vessels shall display lights as prescribed by the board.*

(c) If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not an entirely open motorboat or vessel, and efficient natural or mechanical ventilation system *prescribed by the board* which shall be *used and be* capable of removing resulting gases prior to, and during the time such motorboat or vessel is occupied by any person.

(d) All motorboats shall carry the minimum number of *United States* coast guard approved hand portable fire extinguishers, the number of which is to be determined by the Montana fish and game commission or a *United States* coast guard approved fixed fire extinguishing system, except, that motorboats less than twenty-six (26) feet in length of *entirely* open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.

(e) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using

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gasoline as fuel, equipped with an efficient flame arrester, backfire trap, or other similar device.

(f) The board is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation *and safety* laws or with the navigation *and safety* rules promulgated by the United States coast guard.

(g) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

(2) No vessel shall be equipped in a manner which will permit discharge of inadequately treated sewage into waters of this state. No container of inadequately treated sewage shall be placed, left or discharged in or near waters of this state by anyone at any time. All toilets located on any vessel operated on waters of this state shall have securely affixed to the interior discharge opening of them an operating treatment device or retaining tank meeting the standards established by the state board of health."

Section 6. Section 69-3506, R.C.M. 1947, is amended to read as follows:

"69-3506. **Exemption from numbering provisions of this act.** A motorboat shall not be required to be numbered under this act, if it is:

(1) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of antoher state; provided, that such vessel shall not have been within this state for a period in excess of *sixty (60)* consecutive days. *After sixty (60) consecutive days within this state, this state becomes the motorboat's state of principal use and the owner must apply for a Montana number, certificate of number and license decal.*

(2) A *motorboat* from a country other than the United States temporarily using the waters of this state.

(3) A *motorboat* whose owner is the United States, a state or subdivision thereof.

(4) A ship's lifeboat."

Section 7. Section 69-3508, R.C.M. 1947, is amended to read as follows:

"69-3508. **Prohibited operation.** (a) No person shall operate or knowingly permit any person to operate, any motorboat or

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vessel, or manipulate any water-skis, surfboard, or similar device, *or other contrivance,* in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall operate, or knowingly permit any person to operate, any motorboat or vessel, or manipulate any water-skis, surfboard, or similar device, *or other contrivance,* while intoxicated or under the influence of any narcotic drug, barbituate or marijuana.

(c) It shall be unlawful for the owner of any motorboat or vessel, or any person having such in charge or in control, to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such watercraft under the prevailing circumstances.

(d) No person shall operate, or knowingly permit any person to operate, any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead; provided, however, that nothing in this act is intended to prevent the operator of a vessel actually competing in a regatta which is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(e) No person shall make reckless approach to, *departure from* or passage by a dock, ramp, diving board or float.

(f) Skiers being pulled by motorboats must have on their person a life preserver, buoyant vest or ring buoy.

(g) No person shall moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States or the board nor in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor shall any person deface, remove or destroy any such buoy, beacon or other authorized navigational marker maintained in the waters of this state.

(h) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment, such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended."

Section 8. Section 69-3508.1, R.C.M. 1947, is amended to read as follows:

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"69-3508.1. **Discharge of waste from boat prohibited.** No person shall discharge or cause, permit or suffer to be discharged, any garbage, refuse, waste or sewage from any *vessel* into or upon the waters of any stream, river or lake within the boundaries of the state of Montana."

Section 9. Section 69-3508.2, R.C.M. 1947, is amended to read as follows:

"69-3508.2. **Penalty for discharge of waste from** *vessel.* A person who is convicted of a violation of *section 69-3508.1* shall be punished by a fine of not *less* than twenty-five dollars ($25) *nor more than one hundred dollars ($100).*"

Section 10. Section 69-3510, R.C.M. 1947, is amended to read as follows:

"69-3510. **Restricted areas.** (a) No person shall so anchor a vessel or other obstacles for fishing or pleasure purposes, on any body of water over which the state has jurisdiction, in such a position as to obstruct a passageway ordinarily used by other vessels.

(b) No person shall operate a pleasure vessel within twenty (20) feet of the exterior boundary of a water area which is clearly marked by buoys or some other distinguishing device as a bathing or swimming area.

(c) Swimming areas shall be marked with *white buoys having international orange markings in conformance with the uniform state waterway marking system* by the owners of such areas.

(d) No person, *without permission, or unless unavoidable* shall operate or knowingly permit any person to operate a vessel within *fifty (50)* feet of a person engaged in fishing."

Section 11. Section 69-3512, R.C.M. 1947, is amended to read as follows:

"69-3512. **Collisions, accidents and casualties.** (a) It shall be the duty of the operator of a vessel involved in a collision, accident or other casualty, so far as he can do so without serious danger to his own vessel, crew and passengers (if any), to render to other persons affected by the collision, accident or other casualty, such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident or other casualty, and also to give his name, address and identification of his vessel in writing to any person injured and to the owner, or person in control of any property damaged in the collision, accident or other casualty.

(b) The board shall prepare and distribute to each sheriff's office *and state game wardens* of this state, a standardized accident

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report form; any person involved in a collision, accident or other casualty involving, a death, *disappearance,* personal injury or property damage in excess of one hundred dollars ($100.00) shall immediately report such collision, accident or other casualty to the sheriff's office *or state game warden* of the county in which the collision, accident or casualty occurred and fill out a standardized accident report form.

(c) It shall be the duty of any sheriff advised of a collision, accident or other casualty reported under this act; to (1) conduct an appropriate investigation of such collision, accident or other casualty and (2) to prepare and submit a report of the results of said investigation, together with the completed standardized accident report forms to the board."

Section 12. Section 69-3514, R.C.M. 1947, is amended to read as follows:

"69-3514. **Water-skis and surfboards.** (a) No person shall operate a *motorboat or* vessel on any waters of this state *for the purpose of* towing a person or persons on water skis, a surfboard, or similar device *or other contrivance unless said operator is at least twelve (12) years of age, and further providing that there is a second person, at least twelve (12) years of age, in the vessel to act as observer to observe the person being towed,* nor shall any person engage in water-skiing, surfboarding, or similar activity, *or towing some other contrivances* at any time between the hours from one hour after sunset to one hour before sunrise; provided, however, that the provisions of this subsection do not apply to a performer engaged in a professional exhibition or a person or persons engaged in a regatta or race authorized under this act.

(b) All right of way rules applying to the towing vessel shall apply."

Section 13. **Education program.** The board shall coordinate a statewide boat safety education program.

Section 14. Section 69-3517, R.C.M. 1947, is amended to read as follows:

"69-3517. **Enforcement of act.** It shall be the duty of the fish and game commission to enforce the sections of this law. The state fish and game director shall employ all the necessary personnel to comply with this section. All sheriff's and peace officers of the state of Montana *and all United States coast guard law enforcement officers* shall have authority to enforce provisions of sections 69-3501 through 69-3518."

Section 15. Section 69-3518, R.C.M. 1947, is amended to read as follows:

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"69-3518. **Penalty.** Violations of any section of this act *unless otherwise specified* shall be a misdemeanor and be punishable by fine of not less than *fifteen dollars ($15)* or more than five hundred dollars ($500.00) or by imprisonment up to *six (6) months,* or by both such fine and imprisonment. *All fine and bond forfeitures shall be transmitted to the state treasurer who shall deposit such fines and forfeitures in the motorboat account of an earmarked fund; the moneys shall be used only by the fish and game commission for enforcement of sections 69-3501 through 69-3518."*

Section 16. This act is effectve upon its passage and approval.

Approved: April 4, 1973.

CHAPTER NO. 515

An Act Amending Section 11-203, R.C.M. 1947, Revising the Procedures for the Organization of Cities and Towns; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-203, R.C.M. 1947, is amended to read as follows:

"11-203. **Organization of cities and towns—petition and census.** Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than *two thirds (2/3) of the* qualified electors, *but not more than three hundred (300) such electors who are* residents of the state, and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated, which petition must describe the limits of the proposed city or town, and of the several wards thereof *each of which shall contain one hundred fifty (150) qualified electors or more and,* which must not exceed one square mile for each five hundred inhabitants resident therein. The petitioners must annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map must be filed in the office of the county clerk. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a *house-to-house* census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board of county commissioners, and the same must be

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filed by it in the county clerk's office. No municipal corporation *may* be formed unless the number of inhabitants is three hundred or upwards."

Section 2. This act is effective on its passage and approval.

Approved: April 4, 1973.

CHAPTER NO. 516

An Act to Amend Sections 84-308, 84-401, 84-404, 84-405, 84-428, 84-429.12, 84-606, 84-713, 84-715, 84-719 through 84-723, 84-725 through 84-730, 84-732 through 84-734, 84-801, 84-804, 84-901, 84-904, 84-905, 84-907, 84-1004 through 84-1006, 84-1008, 84-1103, 84-1105, 84-1106, 84-1108, 84-1202, 84-1204 through 84-1207, 84-1209, 84-1302, 84-1304 through 84-1306, 84-1308, 84-1403, 84-1405, 84-1406, 84-1408, 84-1412, 84-1501.2, 84-1502 through 84-1504, 84-1505.1, 84-1505.2, 84-1507, 84-1508, 84-1508.2, 84-1509, 84-1512, 84-1514 through 84-1518, 84-1601, 84-1603 through 84-1606, 84-1608, 84-1702, 84-1703, 84-1705, 84-1707, 84-1831 through 84-1832.1, 84-1834, 84-1835, 84-1837, 84-1838, 84-1841 through 84-1844, 84-1847, 84-1849 through 84-1855, 84-1857, 84-1858, 84-1861, 84-2003, 84-2005, 84-2006, 84-2008, 84-2011 through 84-2013, 84-2016, 84-2104 through 84-2106, 84-2108, 84-2203 through 84-2207, 84-2209, 84-2301 through 84-2309, 84-2401 through 84-2404, 84-2412, 84-2502, 84-2503, 84-2505, 84-2507, 84-2508, 84-2602, 84-2603, 84-2605, 84-2607, 84-2608, 84-3503, 84-3513, 84-3515, 84-3516, 84-3803, 84-3806, 84-4003, 84-4116, 84-4502, 84-4818, 84-4820, 84-4821, 84-4823, 84-4826, 84-4901, 84-4903.1, 84-4903.2, 84-4903.5 through 84-4903.13, 84-4907, 84-4907.1, 84-4913, 84-4914, 84-4919, 84-4920, 84-4924, 84-4928, 84-4928.1, 84-4929 through 84-4931, 84-4937 through 84-4940, 84-4942, 84-4943, 84-4946, 84-4948, 84-4950, 84-4951, 84-4955, 84-4956, 84-4958, 84-5210, 84-5402, 84-5406 through 84-5410, 84-5412, 84-5415, 84-5501, 84-5502, 84-5606.2 through 84-5606.4, 84-5606.6, 84-5606.8, 84-5606.13 through 84-5606.17, 84-5606.20 through 84-5606.22, 84-5606.25, 84-5606.27 through 84-5606.31, 84-5902 through 84-5907, 84-6203 through 84-6209, 84-6211, 84-6212, 84-6301, 84-6306, 84-6307, 84-6402 through 84-6408, 84-6410, 84-6606, 84-6607, 84-6801, 84-6806, 84-6807, 84-6902, 84-6907, R.C.M. 1947, to Delete all Reference to the State Board of Equalization as the Tax Administering Agency for the State and to Replace References to the Board with the Words "State Department of Revenue".

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-308, R.C.M. 1947, is amended to read as follows:

"84-308. **Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.** As a basis for the imposition of taxes upon the different classes of property herein specified, a percentage of the true and full value of each class shall be taken as follows:

Moneys and credits, seven per centum (7%) of true and full value.

Moneyed capital and shares of banks, both national and state, thirty per centum (30%) of true and full value on that portion of the true and full value not represented by surplus, as shown on the books of the bank; seven per centum (7%) on that portion of the true and full value represented by surplus as shown on the books of the bank; provided that on that portion of any such surplus which is over and above the amount represented by the stated capital of a bank, the excess shall be subject to thirty per centum (30%) of true and full value. The state *department of revenue* shall prepare, distribute and cause to be used such forms as it may require to obtain from the banks doing business in this state reports of such facts and figures as may be necessary to ascertain the taxable value of bank shares as a basis for the imposition of taxes."

Section 2. Section 84-404, R.C.M. 1947, is amended to read as follows:

"84-404. **State** *department of revenue* **to assign percentage** *basis, when.* The percentage basis of true and full value as provided for in section 84-302, shall be determined and assigned by the state *department of revenue,* when it makes its annual assessment of the property, which it is required to assess under the constitution or the laws of this state and shall transmit such determination and assignment to the various county clerks with the assessments so made, and its determination shall be final except as to the right of review in the proper court."

Section 3. Section 84-405, R.C.M. 1947, is amended to read as follows:

"84-405. **Assessor's blanks and rolls to be provided by state** *department of revenue.* It shall be made the duty of the state *department of revenue* to prescribe such forms of assessment blanks and assessor's rolls as will comply with the above provisions, grouping all the same percentage class as nearly as possible in one group on blanks and assessor's roll."

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Section 4. Section 84-428, R.C.M. 1947, is amended to read as follows:

"84-428. **Railroads—how assessed.** The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this state must be assessed by the state *department of revenue* as hereinafter provided. Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business."

Section 5. Section 84-429.12, R.C.M. 1947, is amended to read as follows:

"84-429.12. **Classification and appraisal—general and uniform methods.** It is hereby made the duty of the state *department of revenue* to implement the provisions of this act by providing:

1. For a general and uniform method of classifying lands in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes.

All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information. All lands must be classified by forty (40) acre tracts or fractional lots.

2. For a general and uniform method of appraising city and town lots.

3. For a general and uniform method of appraising rural and urban improvements.

4. For a general and uniform method of appraising timberlands."

Section 6. Section 84-606, R.C.M. 1947, is amended to read as follows:

"84-606. **Witnesses may be subpoenaed.** Upon the hearing of the application the *department* may subpoena such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper."

Section 7. Section 84-713, R.C.M. 1947, is amended to read as follows:

"84-713. **Determination of state rate of taxation—notice of.** Between the first and third Mondays of August of each year, the

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governor must determine the rate of state tax to be levied and collected upon the assessed valuation of the property in the state, which, after allowing twelve per cent (12%) for delinquencies in the collection of taxes, must be sufficient to raise the specific amount of the revenue required by the legislative assembly for state purposes. The state *department of revenue* must immediately thereafter transmit to the county clerk of each county a statement of such rate, and upon its receipt the county clerk must, in writing, notify the state *department of revenue* thereof."

Section 8. Section 84-715, R.C.M. 1947, is amended to read as follows:

"84-715. **Duties of public officers.** It shall be the duty of all public officers of the state and of any municipality to give to the *department* information in their possession relating to taxation when required by the *department,* and to co-operate with and aid the *department* in every manner in its efforts to secure a fair, equitable and just enforcement of the taxation and revenue laws of the state."

Section 9. Section 84-719, R.C.M. 1947, is amended to read as follows:

"84-719. **Assessment and apportionment by** *department of revenue*—**when made.** The state *department of revenue* must, on or before the third Monday in July of each year, assess the net proceeds of all mines and all property required by law to be assessed by *the department,* and must apportion to the counties and to the cities, towns, school districts and other taxing districts therein, in the manner provided by law, the total assessment of each of the properties so assessed by *the department.*"

Section 10. Section 84-720, R.C.M. 1947, is amended to read as follows:

"84-720. **Transmission of assessment and apportionment to county clerk.** The state *department of revenue* must, on or before the fourth Monday in July of each year, transmit to the county clerk of each county to which any such apportionment is made, a statement with reference to each property so assessed and apportioned, containing a description thereof sufficient for identification, and stating the kind and character and the amount, quantity and extent of such property and the value thereof in each city, town, school district and other taxing district within the county, and the total value thereof in the county, and *the department* must, at the time of transmitting such statement to the county clerk, transmit a copy thereof to the owner of such property or to the person to whom the same is to be assessed."

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Section 11. Section 84-721, R.C.M. 1947, is amended to read as follows:

"84-721. **Entering of state** *department of revenue's* **assessment in assessment book.** The county clerk must, on the receipt of each such statement from the state *department of revenue,* immediately enter on the assessment books of the county the assessment of such property as contained in such statement, and the same shall constitute the assessment of such property for taxation purposes in such county and in such cities, towns, school districts and other taxing districts of such county; provided that if any city or town in such county shall have provided by ordinance for the collection of its taxes by its own officers the county clerk must immediately after entering such assessment on the assessment books of the county, transmit a copy of so much of such statement as affects such city or town to the clerk thereof, and such city or town clerk shall on receipt thereof enter such assessment on the assessment books of such city or town. All such property is taxable upon such assessment at the same rate, by the same officers, and for the same purposes as other taxable property within such counties, cities, towns, school and other taxing districts, respectively, and such taxes must be collected in the same manner and by the same officers as other taxes are collected."

Section 12. Section 84-722, R.C.M. 1947, is amended to read as follows:

"84-722. **Change of assessment—application—hearing—reassessment.** At any time after the assessment of any property by the state *department of revenue,* and before the fourth Monday in August of the year in which such assessment is made, the owner of such property, or the person to whom the same is assessed, may make written application to the state *department of revenue* to have such assessment changed or corrected in any respect or particular, or to have the assessment set aside and a reassessment made by *the department,* which application must set forth specifically the grounds and reasons on which such application is based. On receipt of any such application the *department* must make an order fixing a day for hearing the same, giving the applicant at least ten days notice in writing of the day so fixed for such hearing. and the state *department of revenue* may, on its own initiative, when it believes that an error or mistake has been made in an assessment made by it, or that it is for the best interests of the state so to do, at any time before the fourth Monday in August of the year in which such assessment is made, make an order for a hearing thereon, giving the owner of or person to whom such property is assessed, at least ten days written notice of the day so fixed for such hearing, in which said notice and order must be stated briefly, the mistake or error believed to

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exist by *the department* and the manner in which it is proposed to correct the same, or wherein the interests of the state require a change to be made in such assessment and the nature of the change proposed therein. On any such hearing, whether held on application of the owner or person to whom the property is assessed or on the initiative of the state *department of revenue,* such *department,* after hearing and considering all evidence introduced on such hearing, may make such changes or corrections in such assessment as it may deem necessary and proper, or may set aside such assessment and make a reassessment of such property; provided that all such hearings must be held and all such changes, corrections or reassessments made by the state *department of revenue* before the second Monday in October. When any change or correction is made in any assessment, or any reassessment is made as the result of such hearing the *department of revenue* must, within fifteen days thereafter, transmit to the county clerk of each county to which such property has been apportioned, or which is affected by such changes, corrections or reassessments, a statement (which) shall be in the same form and contain the same details as the statement required by section 84-720. On receipt of any such statement the county clerk must immediately make the necessary and proper changes in the assessment of such property on the assessment books of the county as shown by such statement, and if any change or correction in such assessment or such reassessment affects any city or town which collects its taxes by its own officer, the county clerk must, after entering the same on the assessment books of the county, transmit to such city or town clerk so much of such statement as affects such city or town and such city or town clerk must thereupon make such changes and corrections on the assessment books of such city or town."

Section 13. Section 84-723, R.C.M. 1947, is amended to read as follows:

"84-723. **Collection of nonresident inheritance taxes, gross earnings on freight lines, license taxes** *by* **state** *department of revenue.* The duty of collecting the nonresident inheritance taxes, all gross earning taxes on freight lines, and the following license taxes, to wit: The corporation license tax, taxes on express companies and sleeping car companies, coal mines, and dealers license taxes, metalliferous mines license tax, cement producers and dealers license taxes, the gasoline distributors and dealers license tax, the oil producer's license tax and all other license taxes determined by the state *department of revenue,* the responsibility for collection of which has heretofore been imposed upon the state treasurer are hereby transferred from the state treasurer to the state *department of revenue;* such collections to be turned over to the state treasurer on the 10th and 25th day of each and every month, and it is further provided that all duties heretofore imposed by law upon the state

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treasurer, with reference to the collection and issuance of receipts for any of the above named license taxes, or other taxes above enumerated, are hereby imposed upon the state *department of revenue.*"

Section 14. Section 84-725, R.C.M. 1947, is amended to read as follows:

"84-725. **Suspense account for receipts and refunds.** The state *department of revenue* shall establish a suspense account in the state treasury for the purpose of conveniently processing receipts and for paying refunds for overpayments of inheritance taxes collected by county treasurers and all other taxes collected by the *department.* All moneys received by the *department* shall be temporarily credited by the state treasurer to the *department's* suspense account. Each month the *department* shall send to the treasurer and to the controller a distribution sheet designating the amount to be deposited in each treasury fund and in each account."

Section 15. Section 84-726, R.C.M. 1947, is amended to read as follows:

"84-726. **Refund of over payments—time of filing claims for refund—procedure.** (1) When there has been an overpayment of the inheritance tax collected by county treasurers or any other tax collected by the state *department of revenue,* and there is no law providing for a refund, the *department* shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2) of this section.

(2) No refund or payment shall be allowed unless a claim is filed by the taxpayer before the expiration of five (5) years from the time the tax was paid. Within six (6) months after the claim is filed the state *department of revenue* shall examine the claim and either approve or disapprove it. If the claim is approved the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state *department of revenue* shall so notify the taxpayer and shall grant a hearing on the claim. If the *department* disapproves a claim after holding a hearing, the determination of the *department* may be reviewed as provided by section 84-4923.1."

Section 16. Section 84-727, R.C.M. 1947, is amended to read as follows:

"84-727. **Assessment of proportionally registered interstate motor vehicle fleets—full or partial year—tax payment required for registration.** The state *department of revenue* shall assess, for the purpose of personal property taxes, interstate motor vehicle fleets proportionally registered under the provisions of sections

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53-701 to 53-724, and said assessment shall be apportioned on the ratio of total miles traveled to in-state miles traveled formula as prescribed by section 53-712. Interstate motor vehicle fleets are hereby declared assessable for taxation purposes upon application for proportional registration and shall be assessed to the persons who own or claim, or in whose possession or control the fleet is at the time of the application. Any fleet contained in an original application which has a situs for purpose of property taxation in Montana by the terms of this act or any other provision of the laws of Montana between January 1st and April 1st shall be taxed for a full year. Any fleet contained in an original application which acquires a situs for the purpose of property taxation in Montana under the provisions of this act or any other law of the state of Montana after April 1st shall have taxes apportioned as provided in section 84-6011. Any fleet, contained in a renewal application, shall be assessed and taxed for a full year. Vehicles contained in a fleet for which current taxes have been assessed and paid shall not be assessed under this section upon presentation to the *department of revenue* of proof of payment of tax for the current registration year. The payment of personal property taxes are a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet."

Section 17. Section 84-728, R.C.M. 1947, is amended to read as follows:

"84-728. **Valuation of interstate fleets—determination of aggregate tax due.** The state *department of revenue* shall assess any interstate motor vehicle fleet making application for proportional registration as follows:

(a) The purchase price depreciated by a schedule as prescribed by the *department* shall determine the depreciated value.

(b) The depreciated value multiplied by the per cent of miles traveled in Montana as prescribed by section 53-712 shall be the assessed value.

(c) The sum of the assessed value of all vehicles included in the fleet multiplied by twenty (20) per cent shall be the taxable value for the entire fleet.

(d) To determine the amount of tax due, the taxable value of the entire fleet shall be multiplied by the state-wide average county mill levy plus state levies as hereinafter provided."

Section 18. Section 84-729, R.C.M. 1947, is amended to read as follows:

"84-729. **Determination of average levy in state—application to interstate fleets—cost stated in application for registration.**

The state *department of revenue* shall determine the aggregate tax in the entire state for: (1) state, (2) county, (3) local purposes, levied on the general property of the state in the previous year excluding special levies on property for local improvements and special state levies on livestock for bounties, inspection and protection purposes.

From the total taxable valuation of the general property of the state including net proceeds and the aggregate tax as determined, the state *department of revenue* shall compute the average levy by dividing the aggregate tax by the total state taxable valuation. The rate so determined shall constitute the rate of taxation on the taxable value of all interstate trucks.

The original cost of each vehicle shall be included on the application for proportional registration under the provisions of sections 53-701 to 53-724. The *department* shall determine the original cost when the owner does not have this information on new or used vehicles, or in the case of rebuilt vehicles."

Section 19. Section 84-730, R.C.M. 1947, is amended to read as follows:

"84-730. **Situs in state of proportionally registered fleets — collection of property tax.** For the purposes of this section, all vehicles previously registered or which registration has been applied for, under the provisions of sections 53-701 to 53-724, are hereby declared to have a situs in the state for the purposes of taxation.

The *department* or its designated agent shall collect the personal property taxes prescribed herein."

Section 20. Section 84-732, R.C.M. 1947, is amended to read as follows:

"84-732. **Certified copies of corporation license and income tax returns furnished to taxpayer**—fee. Certified copies of returns filed for corporation license tax under section 84-1504, and certified copies of returns filed for income tax under section 84-4919, may be furnished by the *department of revenue* to the taxpayer or his duly authorized representative upon payment of fifty cents (50¢) for each page."

Section 21. Section 84-733, R.C.M. 1947, is amended to read as follows:

"84-733. **Corporation license tax clearance certificates furnished—fee.** Upon request of a corporation and upon the payment of one dollar ($1) the *department of revenue* may furnish to it a certificate to the effect that all taxes have been paid, that a return

has been filed and that all information has been supplied as required by the provisions of the Corporation License Tax Act."

Section 22. Section 84-734, R.C.M. 1947, is amended to read as follow:

"84-734. **Fees to reimburse** *department* **for costs—deposit in general fund.** All moneys collected under this act shall be required to reimburse the state *department of revenue* for costs involved in the preparation of the copies and certificates. All such moneys collected shall go into the general fund of the state of Montana."

Section 23. Section 84-801, R.C.M. 1947, is amended to read as follows:

"84-801. **Assessment of railroads.** The president, secretary, or managing agent, or such other officer as the state *department of revenue* may designate, of any corporation, and each person or association of persons, owning or operating any railroad in more than one county in this state, must, on or before the first day of April of each year, furnish the *department* a statement, signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding:

(1) The whole number of miles of railroad in the state; and, where the line is partly out of the state, the whole number of miles without the state, and the whole number within the state, owned or operated by such corporation, person, or association.

(2) The value of the roadway, roadbed, and rails of the whole railroad, and the value of the same within the state.

(3) The width of the right of way.

(4) The number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railroad, including the part without the state.

(5) Number, kind, and value of rolling stock owned and operated in the state.

(6) Number, kind, and value of rolling stock used in the state, but now owned by the party making the returns.

(7) Number, kind, and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns, or by and upon other railroads.

(8) The whole number of sidetracks in each county, including the number of miles of track in each railroad yard in the state.

(9) The number of each kind of rolling stock used in operating the entire railroad, including the part without the state,

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which must include a detailed statement of the number and value thereof, of all engines, passenger, mail, express, baggage, freight, and other cars, or property owned or leased by such corporation, persons, or association.

(10) The number of sleeping and dining cars not owned by such corporation, person, or association, but used in operating the railroads of such corporation, person, or association in the state, or on the line of the road without the state, during each month of the year for which the return is made; also the number of miles each month said cars have been run or operated within and without the state.

(11) A description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road shall have once been given, no other annual description thereof is necessary, unless the road shall have been changed. Whenever the road, or any portion of the road, is advertised to be sold, or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad, or the right of way for the same. If such statement is not furnished as above provided, the assessment made by the state *department of revenue* upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12) Also showing in detail for the year preceding the first of January:

(a) The gross earnings of the entire road;

(b) The gross earnings of the road within the state, and where the railroad is let to other operators, how much was derived by the lessor as rental;

(c) The cost of operating the entire road, exclusive of sinking fund, expenses, of land department, and money paid to the United States;

(d) Net income for such year, and amount of dividend declared;

(e) Capital stock authorized;

(f) Capital stock paid in;

(g) Funded debt;

(h) Number of shares authorized;

(i) Number of shares of stock issued.

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(13) Any other facts the state *department of revenue* may *require.*"

Section 24. Section 84-804, R.C.M. 1947, is amended to read as follows:

"84-804. **Record of assessment and apportionment of railroads.** The state *department of revenue* must keep a record of all such assessments and apportionments."

Section 25. Section 84-901, R.C.M. 1947, is amended to read as follows:

"84-901. **Officers of certain telegraph, telephone, electric power and other lines to furnish statement to state** *department of revenue.* The president, secretary, or managing agent, or such other officer as the state *department of revenue* may designate, of any corporation, and each person or association of persons owning or operating a telegraph, telephone, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other property, other than real estate not included in right of way, and which constitute a single and continuous property throughout more than one county, must, on or before the first Monday of March in each year, furnish the state *department of revenue* a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding, as follows:

1. The whole number of miles of said property in the state, and where the property is partly out of the state, the whole number of miles without the state and the whole number of miles within the state owned or operated by such corporation, person, or association.

2. The total value of the entire property and plant both within and without the state. and the total value of that portion of the same within the state.

3. A complete description of the property within the state, giving the points of entrance into and the points of exit from the state, and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state.

4. Such other information regarding such property as may be required by the state *department of revenue.*"

Section 26. Section 84-904, R.C.M. 1947, is amended to read as follows:

"84-904. **Hearing for the determination of facts pertaining to assessment.** If any corporation, person or association shall

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fail, neglect, or refuse to furnish the state *department of revenue* with a full, true, and correct statement as required, and within the time, by section 84-901, or if the *department* shall have reason to believe that any such statement furnished the *department* is incorrect or erroneous in any particular, the *department* shall order a hearing for the purpose of ascertaining and determining such facts as will enable the *department* to assess the property of such corporation, person or association in accordance with the provisions of section 84-905. At least ten days' written notice of such hearing shall be given to such corporation, person, or association, and on such hearing the *department* shall ascertain and determine each and all of the matters and facts which should have been stated in such statement.''

Section 27. Section 84-905, R.C.M. 1947, is amended to read as follows:

"84-905. **Assessment of property—apportionment to counties.** The *department* must assess all the properties described in section 84-901, but franchises granted by the United States must not be assessed, the value of such properties for assessment purposes to be determined upon such factors as the *department* shall deem proper.

On or before the second Monday in July, the *department* shall apportion such assessment to the counties in which the properties are situated.''

Section 28. Section 84-907, R.C.M. 1947, is amended to read as follows:

"84-907. **Record of assessment and apportionment of properties.** The state *department of revenue* must keep a record of all such assessments and apportionments.''

Section 29. Section 84-1004, R.C.M. 1947, is amended to read as follows:

"84-1004. **Statement to** *department of revenue*—**contents—time for filing.** Each and every person engaged in such business in the state of Montana at the time when this act becomes effective must, not later than the thirtieth day of April, 1929, and every person who shall engage in such business at any time after the date when this act becomes effective, must immediately, upon engaging in such business, file with the state *department of revenue* a certificate and statement, on forms prescribed by the state *department of revenue,* which shall contain the name under which such person is engaged in and carrying on such business in this state, giving the place or places of business and the location of the plant or plants for the production of carbon black owned, leased, controlled, or operated by such person; the name and address of the managing

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agent in this state if an association, corporation, joint stock company or syndicate, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company, corporation or syndicate, the laws of the state under which organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the *department* may deem necessary."

Section 30. Section 84-1005, R.C.M. 1947, is amended to read as follows:

"84-1005. **Records to be kept as required by** *department.* Every such person shall keep a record in such form as the state *department of revenue* may require of all carbon black produced or manufactured by such person in this state and such records shall at all times during the business hours of the day, be subject to inspection by the state *department of revenue,* its members, agents or employees."

Section 31. Section 84-1006, R.C.M. 1947, is amended to read as follows:

"84-1006. **Statement of production—time for making—collection of tax.** (1) Each and every person must, within thirty (30) days after the semiannual period ending June 30, 1929, and within thirty (30) days after the end of each following semiannual period, make out, in duplicate, on forms prescribed by the state *department of revenue,* and deliver to the state treasurer, a statement showing the quantity of carbon black produced or manufactured by such person in the state of Montana during each month of such semiannual period and during the whole of said semiannual period, together with the total amount due the state as license tax for such semiannual period; and must, within such thirty (30) days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the semiannual period for which such statement is made; such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company, or syndicate making the same.

(2) Any such person engaged in or carrying on such business at more than one place in this state, or owning, leasing, controlling, or operating more than one carbon black plant in this state, may include all thereof in one statement. The state treasurer shall receive and file all such statements and collect and receive from such person making and filing a statement with him the amount of tax payable by such person, if any, as the same shall appear from the

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face of the statement. The state treasurer shall endorse on each statement as soon as the same is received by him, the date when so received, the name and post-office address of the person from whom received; and the amount of tax, if any, paid by such person; and he must number such statement consecutively, beginning with the number one (1) for each year followed by the year. The state treasurer shall keep a book in such form as shall be approved by the state *department of revenue,* in which he shall enter each statement filed with him in the order in which received and filed, the number thereof, date of filing, name of person making the return, and the amount of tax, if any, paid by such person, which book shall be designated "State Treasurer's Record of Carbon Black Production License Tax." The state treasurer shall within ten days after the end of each month deliver over to the state *department of revenue* all statements filed with him and not already delivered to *the department,* and such statements shall then be filed in the office of, and become a part of the records of the state *department of revenue.* It shall be the duty of the state *department of revenue* to examine each of such statements and compute the taxes thereon, and the amount so computed by the *department* shall be the taxes imposed, assessed against and payable by the person making the statement for the semiannual period for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the state *department of revenue* within ten days after written notice of the amount of the deficiency shall be mailed by the state *department of revenue* to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be refunded to the person making such payment."

Section 32. Section 84-1008, R.C.M. 1947, is amended to read as follows:

"84-1008. *Department* **to compute tax if no statement filed — penalty and interest—collection of tax.** If any such person shall fail, neglect, or refuse to file any statement required by the provisions of this act within the time therein required, the state *department of revenue* shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the quantity of carbon black produced or manufactured by such person in this state during such semiannual period and during each month thereof, and shall determine and fix the amount of the license tax due the state from such person for such semiannual period, and shall make out a statement, in duplicate, showing the same and shall add to the amount of such license tax a penalty of twenty-five per centum (25%) thereof and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license tax, with the penalty added thereto, and interest on the whole thereof at the rate

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of twelve per centum (12%) per annum from the date of the making of such statement by the state *department of revenue,* until paid.

Upon the request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action at law for the collection of the same."

Section 33. Section 84-1103, R.C.M. 1947, is amended to read as follows:

"84-1103. **Statement to be filed with** *state department of revenue.* Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the thirtieth day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state *department of revenue* a certificate and statement, on forms prescribed by the state *department of revenue,* which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if any association, joint-stock company, syndicate or corporation, or if a firm or copartnership the names and addresses of the persons composing the same; if an association, joint-stock company, syndicate or corporation, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state *department of revenue* may require."

Section 34. Section 84-1105, R.C.M. 1947, is amended to read as follows:

"84-1105. **Record of cement received.** Each and every person engaging in or carrying on such occupation in this state shall keep a record showing all cement, cement plaster, gypsum plaster and other byproducts of cement purchased or received by or delivered to such person for sale by such persons at retail in this state for the manufacturing or production of which cement, cement plaster, gypsum plaster or other byproducts of cement, no person has paid, or assumed liability for the payment of any license tax to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of barrels or tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state *department of revenue,* its members, agents or employees."

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Section 35. Section 84-1106, R.C.M. 1947, is amended to read as follows:

"84-1106. **Quarterly statement of produce sold on which no tax paid—payment of tax.** Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of the following quarter, make out in duplicate, on forms prescribed by the state *department of revenue*, and deliver to the state treasurer, a statement showing the total number of barrels or tons of such commodities sold by such persons during such quarter for the manufacturing or production of which no person has paid, or assumed liability for the payment of, any license tax to the state of Montana under any laws of this state, together with the total amount due to the state of Montana as license taxes from such person for such quarter; and must within thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the quarter for which said statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company, syndicate or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state *department of revenue.*"

Section 36. Section 84-1108, R.C.M. 1947, is amended to read as follows:

"84-1108. **Procedure to ascertain tax on failure of statement—penalty.** If any person shall fail, neglect or refuse to make or file the statement required by section 84-1106 within the time required, the state *department of revenue* shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement, and shall fix and determine the amount of the license taxes due from such person for such quarter, and shall make out a statement in duplicate showing such matters, and the amount of such license taxes and shall add to the amount of such license taxes twenty-five per cent thereof as a penalty, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto, and interest on the whole thereof at the rate of twelve per cent per annum, from the date of the making of such statement by the state *department of revenue* until paid. Upon request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same."

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Section 37. Section 84-1202, R.C.M. 1947, is amended to read as follows:

"84-1202. **License tax on producers and importers of gypsum and cement.** Every person engaged in or carrying on the business in the state of Montana of producing or manufacturing cement, gypsum, gypsum plaster, stucco, wallboard, land plaster or other products of cement or gypsum, and any person who imports into this state any such products for sale or use, must, for the year 1945 and each year thereafter, when engaged in or carrying on such business in this state, pay to the state *department of revenue* for the use of the state of Montana, a license tax for engaging in and carrying on such business in the state of Montana in an amount equal to the following sums:

1. For each and every barrel of cement containing 376 pounds produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove enumerated, or imported by such person into this state for sale or use, four (4) cents.

2. For each and every ton of 2000 pounds of gypsum produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove named, or imported by such person into this state for such sale or use, five (5) cents.

3. The words "products of cement or gypsum" as used in this section shall, in addition to the articles herein specifically enumerated, include all manufactured products into which gypsum enters as a component part to the extent of not less than fifty per cent (50%) by weight. No double taxation of either cement, gypsum or the products thereof is imposed by this act."

Section 38. Section 84-1204, R.C.M. 1947, is amended to read as follows:

"84-1204. **Quarterly payment of tax.** Such annual license tax, as imposed by section 84-1202, shall be paid in quarterly installments for the quarters ending, respectiviely, March 31st, June 30th, September 30th and December 31st, of each year, beginning with the quarter ending March 31, 1945, and the amount of such license tax due for each such quarter shall be paid to the state *department of revenue* within thirty days after the end of each such quarter."

Section 39. Section 84-1205, R.C.M. 1947, is amended to read as follows:

"84-1205. **Statements to be filed with** *department of revenue.* Each and every person engaged in or carrying on the business speci-

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fied in section 84-1202 at the date when this act becomes effective, must, not later than the thirtieth day of April, 1945 and every person who shall, after the date this act becomes effective, engage in such business, must immediately upon engaging therein, file with the state *department of revenue* a certificate and statement, on forms prescribed by the state *department of revenue* which shall contain the name under which such person is engaging in and carrying on such business within this state, giving the name of the place or places of business or location of plants or factories within this state; the name and address of the managing agent in this state; if a corporation, joint-stock company or association, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company or corporation, under the laws of what state organized, its principal place of business and the name and address of its principal officers; and such other information as the state *department of revenue* may deem necessary."

Section 40. Section 84-1206, R.C.M. 1947, is amended to read as follows:

"84-1206. **Manufacturers to keep records.** Every such person shall keep a record in such form as the state *department of revenue* may require of all cement, gypsum, gypsum plaster, stucco, wallboard, land plaster or other products of cement or gypsum manufactured or produced by such person in this state. Such records shall at all times during the business hours of the day be subject to inspection by the state *department of revenue,* its members, agents or employees."

Section 41. Section 84-1207, R.C.M. 1947, is amended to read as follows:

"84-1207. **Quarterly statement and payment of tax.** Each and every person must, within thirty days after the quarter ending March 31, 1945, and within thirty days after the end of each following quarter, make out, on forms prescribed by the state *department of revenue,* and deliver to the state *department of revenue,* a statement showing the total number of barrels or tons of cement or gypsum produced by such person or used by him in the manufacture of the respective articles or products enumerated in section 84-1202 or imported by such person into the state of Montana for sale or use, during each month of such quarter and during the whole quarter, and such other information as *the department* may require, together with the total amount due to the state as license taxes for such quarter; and must, within such thirty days, and at the same time such statement is delivered to the state *department of revenue,* pay to the state *department of revenue* the amount of the license taxes shown by such statement to be due to the state of Montana for

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the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, or joint-stock company making the same. Any such person engaged in carrying on such business at more than one place or operating more than one factory or plant in this state, may include all thereof in one statement."

Section 42. Section 84-1209, R.C.M. 1947, is amended to read as follows:

"84-1209. **Procedure to ascertain tax on failure of statement—penalty.** If any such person shall fail, neglect or refuse to file any statement required by section 84-1207 within the time required, or shall fail to pay the tax required by this act on or before the date such payment is due, the state *department of revenue* shall, immediately after such time has expired, proceed to inform itself as best it may, regarding the amounts of the respective articles or products enumerated in section 84-1202 manufactured or produced by such person within this state or imported by such person into the state, during such quarter, and during each month thereof, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement, showing the same, and shall add to the amount of such license taxes, a penalty of twenty-five per cent thereof and deliver such statement to the attorney general, who shall proceed to collect the amount of the license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent per annum from the date of the making of such statement by the state *department of revenue* until paid. Upon request of the state *department of revenue,* it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to recover the same."

Section 43. Section 84-1302, R.C.M. 1947, is amended to read as follows:

"84-1302. **Strip coal mines license tax—amount—exemptions—testing of samples.** (1) Every person engaged in or carrying on the business of strip coal mining, or engaged in the business of working or operating any strip coal mine or strip coal mining property, in the state of Montana, from which marketable or merchantable coal of any kind is extracted or produced by means of strip mining, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1921, and each year thereafter, when engaged in or carrying on such business, work or operations, pay to the state treasurer, for

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the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work and operations, in the amounts listed in subsection (2) and subject to the exemption provided in subsection (3) on marketable or merchantable coal extracted or produced by means of strip mining by such person in the state of Montana and shipped by such person during such year, or used by such person for any purpose except in connection with the operating of the strip coal mine or mining property from which the same was extracted or produced, by means of strip mining or delivered by such person to any other person for shipment, sale or use by such other person; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed, by any person to mine coal, or to work in or about, or in connection with any strip coal mine to pay such license taxes, nor shall any work required to be done in prospecting for, or in developing, or in opening up any strip coal mine or strip coal mining property, be deemed to be the carrying on of a strip coal mining business, or the engaging in the business of working or operating of a strip coal mine; provided, further, that if during any such work of developing or opening up any strip coal mine or strip coal mining property, any marketable or merchantable coal shall be extracted or produced by means of strip mining and sold, then the same shall be deemed the carrying on of a strip coal mining business and the engaging in the business of working and operating a strip coal mine.

(2) The license tax to be paid under subsection (1) of this act shall be computed as follows:

For each ton of coal having a British thermal unit (hereafter, BTU) rating per pound of six thousand (6,000) or less, four cents ($.04) per ton.

For each ton of coal having a BTU rating of six thousand one (6,001) to seven thousand five hundred (7,500), six cents ($.06) per ton.

For each ton of coal having a BTU rating of seven thousand five hundred one (7,501) to nine thousand (9,000), eight cents ($.08) per ton.

For each ton of coal having a BTU rating of nine thousand one (9,001) and up, ten cents ($.10) per ton.

(3) The person paying such license tax shall be entitled to exempt annually from said license tax a total of five thousand (5,000) tons of coal, and such exemption may be applied all to one British thermal unit rating, or may be spread among the several ratings, but the total exemption may not exceed, in any case, five thousand (5,000) tons in any one year.

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(4) The Montana state bureau of mines and geology (hereafter bureau) is designated as the testing agency for purposes of this act and is granted the right to promulgate rules and regulations to provide testing data required by this act. The rules and regulations promulgated under this act shall be structured to mutually protect the interest of the persons subject to the provisions of this act and the state of Montana.

(5) Every person subject to the provisions of this act shall on or before the first day of August of each calendar year submit to the bureau a sample of mine run "as is" coal from their coal production area. Additional sampling shall be required of the persons subject to this act at the request of the bureau.

(6) The bureau shall provide a form showing the results of the testing provided for under this act to the persons subject to this tax and the *department of revenue* prior to the first of September of each calendar year."

Section 44. Section 84-1304, R.C.M. 1947, is amended to read as follows:

"84-1304. **Strip coal mine operators to file statements.** Each and every person engaged in or carrying on the business of strip coal mining, or engaged in the business of working or operating any strip coal mine or strip coal mining property in the state of Montana, from which coal of any kind is extracted or produced by means of strip mining at the date when this act becomes effective, must, not later than the thirtieth day of April, 1921, and every person who shall, after the date this act becomes effective, engage in the business of strip coal mining or engage in working or operating any strip coal mine or strip coal mining property in the state of Montana, from which coal of any kind is extracted or produced by means of strip mining must, immediately upon engaging in such business, work or operations, file with the state *department of revenue,* a certificate and statement, on forms prescribed by such state *department of revenue,* which shall contain the name under which such person is engaging in and carrying on such business, work and operations, within this state, giving the place or places of business or location of the strip coal mine or strip coal mining property; the name and address of the managing agent in this state, if an association, joint-stock company, or corporation, or if a firm or partnership, the names and addresses of the persons composing the same; if an association or corporation, under the laws of what state organized, its principal place of business and the names and addresses of its principal officers; and such other information as the *department* may deem necessary."

Section 45. Section 84-1305, R.C.M. 1947, is amended to read as follows:

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"84-1305. **Records to be kept by mine operators.** Every such person shall keep a record, in such form as the state *department of revenue* may require, of all coal mined, extracted or produced, and of all coal sold or otherwise disposed of by such person, and such records shall at all times during the business hours of the day be subject to inspection by the state *department of revenue,* its members, agents and employees."

Section 46. Section 84-1306, R.C.M. 1947, is amended to read as follows:

"84-1306. **Quarterly statements of mine operators—payment of license tax.** Each and every such person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state *department of revenue,* and deliver to the state treasurer, a statement showing the total number of tons, of two thousand pounds each, of marketable or merchantable coal mined, extracted, or produced by such person during such quarter, from all coal mines or coal mining property worked or operated by such person, and shipped by such person, or used by such person for any purpose except in connection with the operating of the mine or mining property from which the same was mined, extracted or produced, or delivered by such person to any other person for shipment, sale or use by such other person, together with the total amount due to the state as license tax for such quarter; and must within such thirty days, and at the time of delivering such duplicate statement to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana, for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state, of the association, joint-stock company, or corporation making the same. Any person engaged in working or operating more than one coal mine may include all coal mines worked or operated by him in one statement. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state *department of revenue.*"

Section 47. Section 84-1308, R.C.M. 1947, is amended to read as follows:

"84-1308. **Procedure to determine tax—penalty—tax lien.** If any person shall fail, neglect or refuse to file any statement required by section 84-1306, or shall fail to make payment of such license tax within the time therein required, the state *department of revenue,* shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of tons of

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marketable or merchantable coal mined, extracted or produced by such person, during such quarter and shipped or used by such person, or delivered by such person to any other person for shipment, sale or use by such other person, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement in triplicate, showing the same, and shall add to the amount of such license taxes, ten per centum (10%) thereof as a penalty, and one of such statements shall be filed in the office of the county clerk and recorder of the county in which the coal was produced and one of such statements delivered to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof, at the rate of eight per centum (8%) per annum from the date of making of such statement by the state *department of revenue* until paid. Upon request of the state treasurer, it shall be the duty of the attorney general or any county attorney to commence, and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same.

The license tax assessed against any person under this act, together with penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and upon the mine from which the coal was produced, which lien shall attach on the date when the license tax is certified to the state treasurer by the state *department of revenue* and such lien may be enforced in the name of the state of Montana, in the same manner as other liens are enforced at law."

Section 48. Section 84-1403, R.C.M. 1947, is amended to read as follows:

"84-1403. **Retailers to file statements—Contents.** Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the 30th day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state *department of revenue* a certificate and statement, on forms prescribed by the state *department of revenue*, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state; giving the location of each place of business of such person, the name and address of the managing agent in this state, if an association, joint-stock company, syndicate, or corporation; or, if a firm or copartnership the names and addresses of the persons composing the same; if an association, joint-stock company, syndicate, or corporation, under the laws of what state organized, its principal place of business, and

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the names and addresses of its principal officers, and such other information as the state *department of revenue* may require."

Section 49. Section 84-1405, R.C.M. 1947, is amended to read as follows:

"84-1405. **Record of coal sold for retail.** Each and every person engaging in or carrying on such occupation or business in this state shall keep a record showing all coal purchased or received by or delivered to such person for sale by such person at retail in this state for the mining of which coal no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state *department of revenue,* its members, agents or employees."

Section 50. Section 84-1406, R.C.M. 1947, is amended to read as follows:

"84-1406. **Statement of coal sold—form of filing.** Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out in duplicate, on forms prescribed by the state *department of revenue,* and deliver to the state treasurer, a statement showing the total number of tons of coal sold by such person during such quarter for the mining of which no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, together with the total amount due to the state of Montana as license fees from such person for such quarter; and must within such thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license fees shown by such statement to be due to the state of Montana for the quarter for which said statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company, syndicate, or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state *department of revenue.*"

Section 51. Section 84-1408, R.C.M. 1947, is amended to read as follows:

"84-1408. **Procedure to determine tax on failure to file statement—penalty.** If any person shall fail, neglect, or refuse to make

or file the statement required by section 84-1406, or shall fail to make payment of such license tax within the time therein required, the state *department of revenue* shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement and shall fix and determine the amount of the license fees due from such person for such quarter, and shall make out a statement in duplicate showing such matters, and the amount of such license fees, and shall add to the amount of such license fees twenty-five per centum (25%) thereof as a penalty, and deliver one (1) of such statements to the state treasurer, who shall proceed to collect the amount of such license fees, with the penalty added thereto, and interest on the whole thereof at the rate of eight per centum (8%) per annum from the date of the making of such statement by the *department of revenue* until paid. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same."

Section 52. Section 84-1412, R.C.M. 1947, is amended to read as follows:

"84-1412. **Revocation of license.** The state *department of revenue* shall have the power to revoke the license of any person upon the conviction of such person of the violation of any of the provisions contained in the two preceding sections, but no revocation shall be made until due notice of the intention of the state *department of revenue* so to do shall have been given to such person and such person afforded an opportunity to appear before such state *department of revenue* and show cause why such license should not be revoked."

Section 53. Section 84-1501.2, R.C.M. 1947, is amended to read as follows:

"84-1501.2. **Election by small business corporation.** (a) Eligibility. Except as provided in subsection (f), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if all persons who are shareholders in such corporation—

(1) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day, or

(2) on the day on which the election is made, if the election is made after such first day, consent to such election.

(b) Effect. If a small business corporation makes an election under subsection (a), then—

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(1) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such corporation, and

(2) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this act shall apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such shareholder.

(c) Where and how made.

(1) In general. An election under subsection (a) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year, or at any time during the month preceding such first month. Such election shall be made in such manner as the *department of revenue* shall prescribe by regulations.

(2) Taxable years beginning before date of enactment. An election may be made under subsection (a) by a small business corporation for its first taxable year which begins after December 31, 1958, and on or before the date of the enactment of this subchapter, and ends after such date at any time—

(A) within the 90-day period beginning on the day after the date of the enactment of this subchapter, or

(B) if its taxable year ends within such 90-day period, before the close of such taxable year.

An election may be made pursuant to this paragraph only if the small business corporation has been a small business corporation (as defined in this act) on each day after the date of the enactment of this subchapter and before the day of such election.

(d) Years for which effective. An election under subsection (a) shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated, with respect to any such taxable year, under subsection (e).

(e) Termination.

(1) New shareholders. An election under subsection (a) made by a small business corporation shall terminate if any person who was not a shareholder in such corporation—

(A) on the first day of the first taxable year of the cor-

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poration for which the election is effective, if such election is made on or before such first day, or

(B) on the day on which the election is made, if such is made after such first day, becomes a shareholder in such corporation and does not consent to such election within such time as the *department of revenue* shall prescribe by regulations. Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(2) Revocation. An election under subsection (a) made by a small business corporation may be revoked by it for any taxable year of the corporation after the first taxable year for which the election is effective.

An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective—

(A) for the taxable year in which made, if made before the close of the first month of such taxable year.

(B) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable years of the corporation. Such revocation shall be made in such manner as the state *department of revenue* shall prescribe by regulations.

(3) Ceases to be small business corporation. An election under subsection (a) made by a small business corporation shall terminate if at any time—

(A) after the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) after the day on which the election is made, if such election is made after such first day, the corporation ceases to be a small business corporation (as defined in this act). Such termination shall be effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(f) Election after termination. If a small business corporation has made an election under subsection (a) and if such election has been terminated or revoked under subsection (e), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year prior to its fifth taxable year which begins after the first tax-

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able year for which such termination or revocation is effective, unless the state *department of revenue* consents to such election.

(g) This election shall not be effective unless the corporate net income or loss of such electing corporation shall have been included in the stockholders' adjusted gross income as such is defined in section 84-4905.

(h) Every electing corporation shall be required to pay the minimum fee of ten dollars ($10.00) required by section *84-1501.*"

Section 54. Section 84-1502, R.C.M. 1947, is amended to read as follows:

"84-1502. **Deductions allowed in computing income.** In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

2. (A) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear of property arising out of its use or employment in the business or trade. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(B) (a) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 84-1502, over the gross income,

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with the modifications specified in paragraph (b) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three (3) taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five (5) taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in paragraph (b) (ii) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(b) The modifications referred to in paragraph (a) of this subsection shall be as follows:

(i) No net operating loss deduction shall be allowed.

(ii) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(c) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(d) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger.

In the case of consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidation.

(e) Notwithstanding the provisions of section 84-1508.1 (c), R.C.M. 1947, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(f) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions

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in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the state *department of revenue;* provided, however, for the purpose of determining depletion, depreciation and obsolescence, in all cases not expressly provided for in this act, the provisions of the most recent act of Congress of the United States, commonly known as the Federal Income Tax Act, and the rules, regulations and decisions thereunder, in so far as the same are applicable and pertinent and not repugnant to or inconsistent with the express provisions of this act, shall be the rule of decision by the state *department of revenue.*

4. The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this act.

5. Interest income from obligations of the state of Montana, or any political subdivision or municipality of the state of Montana.

6. Taxes paid within the year except the following: (a) Taxes imposed by this act.

(b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(c) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state."

Section 55. Section 84-1503, R.C.M. 1947, is amended to read as follows:

"84-1503. **Segregation of income within and without state.** If the income of any corporation from sources within the state cannot be properly segregated from income without the state, then, in that event, the amount of the net income returned shall be that proportion of the taxpayer's total net income which the taxpayer's gross business done in the state of Montana bears to the total gross business of the taxpayer, and apportionment shall be made under the rules and regulations prescribed by the state *department of revenue,* giving consideration to sales, property and payroll and such other factors as may be deemed applicable; provided, however, that the state *department of revenue* shall, upon

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the presentation of satisfactory evidence, determine that the income from sources within the state of Montana may be properly segregated from income from sources without the state of Montana and shall allow separate accounting. The *department* shall publish not less than once every three (3) years, all rules and regulations and all changes in rules and regulations as they occur pertaining to this section. All decisions by the *department* under this section shall be subject to judicial review in an action prosecuted by the corporation in the district court of Lewis and Clark county. The taxpayer may not change from apportionment by formula to separate accounting or vice versa without first obtaining permission from the *department.*"

Section 56. Section 84-1504, R.C.M. 1947, is amended to read as follows:

"84-1504. **Computation of license tax—return of net income to be filed.** (1) The license fee shall be computed upon the total net income of the corporation received within each preceding calendar year ending December 31; provided, that any corporation subject to this license fee may designate the last day of any month in the year as the day of the close of its fiscal year, and shall be entitled to have the license fee payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment, instead of upon the basis of the net income for the calendar year preceding the date of assessment, and it shall give notice to the state *department of revenue* of the day it has thus designated as the close of its fiscal year, at any time not less than thirty (30) days prior to the time its return would be filed if made upon the basis of the calendar year.

(2) Every corporation, subject to the license fee herein imposed, shall for each year hereafter, for the year ending on the thirty-first day of December, or for its fiscal year selected under the provisions hereof, render a true and accurate return of its annual net income in the manner and form to be prescribed by the state *department of revenue,* and containing such facts, data and information as are appropriate and in the opinion of the state *department of revenue* necessary to determine the correctness of the net income returned and to carry out the provisions of this act. The return shall be signed by the president, vice-president, or other principal officer, and by the treasurer, assistant treasurer, or chief accounting officer. If the corporation is reporting on a calendar year basis the return shall be filed with the state *department of revenue* on or before the fifteenth day of May in each year, and if reporting on a fiscal year basis the return shall be filed with said *department* on or before the fifteenth day of the

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fifth month following the close of its fiscal year. Upon application a corporation shall be allowed an automatic extension of time for filing its return to the fifteenth day of the third month following the date prescribed for filing of its tax return. The application is to be made on such forms as the *department of revenue* shall prescribe. The *department of revenue* may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists. The term gross income means the income from all sources within the state of Montana recognized in the determination of the corporation's federal income tax liability; but shall include interest exempt from federal income tax. The term "net income" means the gross income of the corporation less the allowable deductions. However, the definitions of gross income and net income set forth in this section shall not be construed as allowing the deductions set forth in section 243 of the Federal Internal Revenue Code as now written, or as that section shall be labeled or amended. The term "fiscal year" means an accounting period of twelve (12) months ending on the last day of any month other than December.

(3) In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of a corporation subject to the license fee imposed by this act, such receiver, trustee, or assignee shall make the return in the same manner and form as such corporation is hereinbefore required to make return, and any license fee due on the basis of such returns made by the receiver, trustee, or assignee, shall be assessed and collected in the same manner as if assessed directly against the corporation of whose business or property they have custody and control, and shall be paid by such receiver, trustee, or assignee out of the property of the company in his hands, prior to the claims of creditors or stockholders."

Section 57. Section 84-1505.1, R.C.M. 1947, is amended to read as follows:

"84-1505.1. **Release of tax liens.** (1) The state *department of revenue* shall issue a certificate of release of any lien imposed with respect to any tax due under Title 84, chapter 15, R.C.M. 1947, when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof has been fully satisfied. The state *department of revenue* may issue a certificate of release if it determines that the lien is unenforceable.

(2) The state *department of revenue* may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under Title 84, chapter 15, R.C.M. 1947, if:

(a) It finds that the fair market value of that part of the

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property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which may have priority to such lien;

(b) There is paid to the state treasurer in part satisfaction of the liability secured by the lien, an amount which shall not be less than the value, as determined by the state *department of revenue,* of the interest of the state of Montana in the part to be discharged; or

(c) The state *department of revenue* determines at any time that the interest of the state of Montana in the part to be so discharged has no value."

Section 58. Section 84-1505.2, R.C.M. 1947, is amended to read as follows:

"84-1505.2. **Immediate payment of tax or deficiency due may be required if delay would jeopardize collection.** If the state *department of revenue* finds that the assessment or collection of the tax or a deficiency in tax due under any corporation license tax statute of Montana for any taxable period will be jeopardized in whole or in part by delay, it may mail notice of its findings to the taxpayer together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the board may declare the taxable period of the taxpayer immediately terminated, and shall mail or issue notice of its findings to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once."

Section 59. Section 84-1507, R.C.M. 1947, is amended to read as follows:

"84-1507. **Returns and corrections to be public records.** When the assessment shall be made as provided in this act, the returns, together with any corrections thereof which may have been made by the state *department of revenue,* shall be filed in the office of said *department,* and shall constitute public records and be open to inspection as such only upon the order of the governor, and under rules and regulations to be prescribed by the state *department of revenue.*"

Section 60. Section 84-1508, R.C.M. 1947, is amended to read as follows:

"84-1508. **Regulations—attendance of witnesses—arbitrary assignment of net income.** The state *department of revenue* shall

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have power to prescribe forms for the returns and notices and such other regulations as may from time to time be found necessary for the purpose of carrying into effect the provisions of this act. Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana, in and for the county of Lewis and Clark, to compel attendance of witnesses to testify before the state *department of revenue,* together with the production of books and such other testimony by appropriate process. When the state *department of revenue* has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the net income properly attributable to this state, whether by the arbitrary shifting of income through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining the same, the *department* shall have regard to the fair profits which would normally arise from the conduct of the business."

Section 61. Section 84-1508.2, R.C.M. 1947, is amended to read as follows:

"84-1508.2. **Periods of limitation—limitations for notification of additional tax extended if taxpayer fails to report change in federal tax—waiver.** (1) Except as otherwise provided in this section and in section 84-1513, R.C.M. 1947, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within five (5) years from the date the return was filed. For the purposes of this section a return filed before the last day prescribed for filing shall be considered as filed on such last day. Where before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by section 84-1517, R.C.M. 1947, until five (5) years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after five (5) years from the last day prescribed for filing the return or after one (1) year

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from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the state *department of revenue* has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the state *department of revenue* may propose an additional assessment, the period within which a claim for refund or credit may be filed, or a credit or refund allowed in the event no claim is filed, shall automatically be so extended."

Section 62. Section 84-1509, R.C.M. 1947, is amended to read as follows:

"84-1509. **Consolidated returns—computation and procedure on.** (1) Corporations which are affiliated may not file a consolidated return unless at least eighty per cent (80%) of all classes of stock of each corporation involved is owned directly or indirectly by one (1) or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and permission to file a consolidated return is given by the state *department of revenue.* For purposes of this section, a "unitary business operation" means one in which the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations.

(3) If the conditions of subsections (1) and (2) of this section are met, the state *department of revenue* may require corporations to file a consolidated return when the *department* considers a consolidated return necessary.

(4) Any corporation liable to report under this act and owning, or controlling, either directly or indirectly, at least eighty per cent (80%) of all classes of stock of each corporation involved, may be required to make a consolidated report showing the combined net income [,] such assets of the corporation as are required for the purposes of this act, and such other information as the state *department of revenue* may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to report under this act and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, such assets of the corporation as are required for the purposes of this act, and such other information as the state *department of revenue* may require, but excluding inter-

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corporate stockholdings and intercorporate accounts. In case it shall appear to the state *department of revenue* that any arrangement exists in such a manner as to improperly reflect the business done, the segregable assets or the entire net income earned from business done in this state, the state *department of revenue* is authorized and empowered, in such manner as it may determine, to equitably adjust the tax."

Section 63. Section 84-1512, R.C.M. 1947, is amended to read as follows:

"84-1512. **Where omission deemed committed—certificate of** *department* **as evidence.** The failure to do any act, required by or under the provisions of this act, shall be deemed an act committed in the office of the state *department of revenue* in the state capitol building, in Helena, Montana. The certificates of the state department of revenue to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied."

Section 64. Section 84-1514, R.C.M. 1947, is amended to read as follows:

"84-1514. **Delinquency—suspension—forfeiture-dissolution.** If a tax computed and levied hereunder is not paid or if a return is not filed before five o'clock P. M. on the last day of the eleventh month after the date of delinquency the corporate powers, rights and privileges of the delinquent taxpayer, if it be a domestic corporation, shall be suspended, and if the delinquent taxpayer be a foreign corporation it shall thereupon forfeit its rights to do intrastate business in this state. Provided that, if any domestic corporation shall fail, for a period of five consecutive years, to either file a return or to pay the corporation license tax, the state *department of revenue* shall notify such corporation by mail addressed to the latest address on file in its office that such corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within a period of sixty (60) days from and after the mailing of such notice, and, if such delinquent reports are not made and all delinquent corporation licenses are not paid before the expiration of said sixty (60) day period, the state *department of revenue* shall certify this fact to the secretary of state and upon receipt of such certificate, the said corporation shall be dissolved and the secretary of state shall indicate, by his records, such dissolution.

The state *department of revenue* shall transmit the name of each such corporation to the secretary of state, who shall imme-

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diately record the same in such manner that it may be available to the public. The suspension, forfeiture or dissolution herein provided for shall become effective immediately such record is made, and the certificate of the secretary of state shall be conclusive evidence of such suspension, forfeiture or dissolution."

Section 65. Section 84-1515, R.C.M. 1947, is amended to read as follows:

"84-1515. **Reviver of corporation after suspension or forfeiture.** Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the state *department of revenue* showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors, and the same shall be filed with the secretary of state, for which he shall receive a filing and recording fee of five dollars ($5). In case the application is made more than one (1) year from the date the suspension or forfeiture occurred the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year with respect to which the suspension or forfeiture occurred, and upon such payment the secretary of state shall issue a certificate of reviver for which he shall collect a fee of five dollars ($5) and thereupon the applicant shall be revived. The reviver shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver provided for in this section may be recorded in the office of the county recorder in any county of this state."

Section 66. Section 84-1516, R.C.M. 1947, is amended to read as follows:

"84-1516. **Penalty for violation of act.** Every officer or employee of any corporation or other person, who, without fraudulent intent, shall fail to make, render, sign or verify any return, or to supply any information within the time required by or under the provisions of this act, shall be liable to a penalty of not more than one hundred dollars ($100) to be imposed, assessed, and collected by the state *department of revenue* in the same manner as is provided in this act with regard to delinquent taxes."

Section 67. Section 84-1517, R.C.M. 1947, is amended to read as follows:

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"84-1517. **Failure to make return—estimate and investigation of net income—copy of federal return to be furnished on request—report of change in federal tax—copy of amended federal returns.** (1) If any taxpayer fails to make return as herein required, the state *department of revenue* is authorized to make an estimate of the taxes due from such taxpayer from any information in its possession.

(2) The state *department of revenue,* for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of net income of any corporations where information has been obtained, shall also have power to examine or to cause to have examined by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of any officer or employee of the corporation rendering such return or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information.

(3) Every corporation shall, upon request of the state *department of revenue,* furnish a copy of its federal income tax return and the computation schedule filed for such taxable year or years as the said *department* may specify in its request. If the amount of a corporation taxable income reported on its federal income tax return or the computation schedule filed for any taxable year is changed or corrected by the United States internal revenue service or other competent authority, the corporation shall report such proposed change or correction to the state *department of revenue* within ninety (90) days after receiving official notice thereof. Any corporation filing an amended federal income tax return changing or correcting its taxable income for any taxable year shall also file an amended return with the state *department of revenue* within ninety (90) days thereafter."

Section 68. Section 84-1518, R.C.M. 1947, is amended to read as follows:

"84-1518. **Reciprocity with federal and other states' revenue officers regarding returns.** The state *department of revenue* under such rules as they may prescribe, may permit, notwithstanding the provisions of this act as to secrecy, the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax on or according to income, to inspect the returns of any taxpayer making returns under this act, or may furnish to such officer or his authorized representative an abstract or any return or matter contained in any affidavit, statement or certificate made or filed in connection with any return or any tax or credit claimed as a deduction from any tax, or any information dis-

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closed by the report of any investigation relating to the income or tax of any taxpayer; but such permission shall be granted or information furnished to such officer, or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act."

Section 69. Section 84-1601, R.C.M. 1947, is amended to read as follows:

"84-1601. **Electrical energy producers' license tax.** That in addition to the license tax now provided by law, each and every individual, firm, partnership, common-law trust, corporation, association or other organization now engaged in the generation, manufacture or production of electricity, and electrical energy in the state of Montana, either through water power or by any other means, for barter, sale or exchange and hereinafter referred to as the "producer," shall on or before the fifteenth day of each calendar month beginning with the fifteenth day of May, 1969, render a statement to the state *department of revenue* of the state of Montana, showing the gross amount of money received on account of sales of electricity and electrical energy during the preceding calendar month without any deduction, and shall pay a license tax thereon in the sum of one and four hundred thirty-eight thousandths per cent (1.438%) of such gross amount as shown on such statement in the manner and within the time hereinafter provided; and such tax shall be effective for the taxable year commencing April 1, 1969, and also for each taxable year thereafter."

Section 70. Section 84-1603, R.C.M. 1947, is amended to read as follows:

"84-1603. **Disposition of revenue—interest on delinquency.** The state *department of revenue* shall receipt therefor and promptly turn the same over to the state treasurer. Taxes not met on the due date shall become delinquent and shall bear interest from said due date at the rate of twelve per cent (12%) per annum."

Section 71. Section 84-1604, R.C.M. 1947, is amended to read as follows:

"84-1604. **Statement of producer—contents—time for filing.** On or before the fifteenth (15) day of April, 1934, every producer referred to in section 84-1601, engaged in the production, generation or manufacture of electricity or electrical energy, shall make and file with the state *department of revenue* of the state of Montana, on forms prescribed by the state *department of revenue,* an acknowledged and verified certificate which shall contain:

(a) The name under which the producer is transacting business within the state;

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(b) His or its post-office address and principal place of business within the state;

(c) The address and location of his or its production plants or station in the state of Montana;

(d) The name and address of the managing agent;

(e) The names and addresses of the several persons composing any firm or partnership constituting the producer, and if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its officers, directors, general agent and general manager.

(f) Certified copies of any papers necessary to show that such producer has complied with the laws of the state of Montana in order to transact business in Montana."

Section 72. Section 84-1605, R.C.M. 1947, is amended to read as follows:

"84-1605. **Producers' monthly statement of gross sales—inspection of books of producer.** That every such producer shall on or before the fifteenth (15) day of each calendar month, beginning with April 15, 1934, and monthly thereafter, render to the state *department of revenue* of the state of Montana on forms prescribed by the state *department of revenue,* a statement sworn to by the manager, president, secretary or treasurer, showing the gross proceeds received for or on account of, all sales of electricity and electrical energy for the preceding calendar month. The books and records of such producer shall be subject to inspection by the state *department of revenue,* its agents or employees, during reasonable hours."

Section 73. Section 84-1606, R.C.M. 1947, is amended to read as follows:

"84-1606. **Exemptions.** All electricity and electrical energy used for pumping water for irrigation purposes to be used on lands in the state of Montana is exempt from the provisions of this act, except in cases where the water so pumped is sold or rented to such irrigated lands; provided, the exemption here given shall accrue to the benefit of the consumer of such electricity and electrical energy. Provided, further, that the full amount of such license tax which would have been due from such producers of electricity and electrical energy, if such exemption had not been made, shall be credited annually for the year in which the exemptions are made, on the power bill of the consumer, by the producer of such electricity and electrical energy, furnishing such power and such producer shall include a statement of the amount of electricity and electrical energy exempted by this section, furnished by it for the purpose of pumping

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water for irrigation purposes on lands in the state of Montana, to the state *department of revenue* as part of the statement required by section 84-1601, together with a statement of credits made on the power bills to the consumers of such electricity and electrical energy for the pumping of water for irrigation to be used on lands in the state of Montana."

Section 74. Section 84-1608, R.C.M. 1947, is amended to read as follows:

"84-1608. **False statements constitute perjury.** Any person, officer, partner, agent or representative of any producer referred to in section 84-1601, who shall make any false statement, affidavit, certificate, report or statement herein required to be made to the state *department of revenue,* hereunder, shall be deemed guilty of perjury and upon conviction shall be punished by imprisonment in the state penitentiary for not less than one (1) nor more than fourteen (14) years."

Section 75. Section 84-1702, R.C.M. 1947, is amended to read as follows:

"84-1702. **Statements to be filed with state** *department of revenue.* Any express company as defined in the preseding section, doing busines in this state, shall annually, between the first and thirtieth day of April, after the approval of this act, under oath of the person constituting such company, if a person, or under oath of the presiden, treasurer, superintendent of chief officer in this state of such association or corporation, if an association or corporation, make and file with the state *department of revenue,* a statement in such form as the *department* may prescribe, containing the following facts:

First. The name of the person or persons, association or corporation;

Second. Under the laws of what state or country organized;

Third. The location of its principal office;

Fourth. The names and post-office address of the president, secretary, auditor, treasurer, superintendent and general manager;

Fifth. The name and post-office address of the chief officer or managing agent of the company in this state;

Sixth. The entire receipts (including all sums entered or charged whether actually received or not) for business done by such company within this state, including its proportion of gross receipts for business done by such company within the state in connection with other companies;

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Seventh. Such other facts and information as the said board may require in the form of return prescribed by it."

Section 76. Section 84-1703, R.C.M. 1947, is amended to read as follows:

"84-1703. **Gross receipts—how ascertained.** The state *department of revenue* shall proceed to ascertain and determine on or before the first Monday of August in each year the entire gross receipts of each of said express companies for business done within the state of Montana for the year next preceding the first day of April, and the amount so ascertained by the said board shall be held and deemed to be the gross receipts of such express company for business done within the state of Montana for the year under consideration."

Section 77. Section 84-1705, R.C.M. 1947, is amended to read as follows:

"84-1705. **Penalty for failure to make statement—duty of attorney general to institute action.** In case any express company shall refuse, fail or neglect to make and file the statement or schedule as provided for in this act, such company shall be subject to a penalty of five hundred dollars and an additional penalty of one hundred dollars for each day's omission after the thirtieth day of April to file its statement, said penalty to be recovered by action in the name of the state and on collection paid into the state treasury to the credit of the general fund of the state. The attorney general, on request of the state *department of revenue,* shall institute such action against any such person or persons, joint-stock company or corporation so delinquent in any court of competent jurisdiction in this state."

Section 78. Section 84-1707, R.C.M. 1947, is amended to read as follows:

"84-1707. **Amount and collection of license tax.** The state *department of revenue* shall, on the first Monday of August, annually, enter in a book provided for that purpose the amount of gross receipts of express companies doing business in this state for the year next preceding the first day of April, as determined by the provisions of this act. It shall be the duty of the state treasurer annually to collect from each such express company doing business in this state, a sum in the nature of a license tax to be computed by taking four per centum of the amount fixed by the state *department of revenue* as the gross receipts of such express company for business done within the state for the year next preceding the first day of April as determined and certified by the state *department of revenue;* provided, however, that nothing contained in this act shall exempt or relieve any express company from the assessment

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and taxation of its tangible property in the manner authorized and provided by law. All licenses collected under the provisions of this act shall be accredited to the general fund of the state."

Section 79. Section 84-1831, R.C.M. 1947, is amended to read as follows:

"84-1831. **Definitions.** As used in this act, the following definitions shall apply:

(a) "Person" means and includes any person, firm, association, joint-stock company, syndicate, copartnership, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment or both, as applied to a firm, association, syndicate, or copartnership, means and includes the partners or members thereof, and as applied to joint-stock companies and corporations, the officers thereof.

(b) *"Department"* means the state *department of revenue.*

(c) As used in this act, "public roads and highways of this state" shall mean all streets, roads, highways, and related structures as have been, or shall be, built and maintained with appropriated funds of the United States and which have been, or shall be, built and maintained with funds of the state of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain, or have been acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(d) "Motor vehicle" means any vehicle which is self-propelled upon the highways.

(e) "Special fuel" means those combustible gases and liquids commonly referred to as liquid petroleum gases and also diesel fuel or any other volatile liquid of less than forty-six degrees (46°) A.P.I. (American Petroleum Institute) gravity test, when actually sold for use in motor vehicles propelled upon the public highways or streets within the state of Montana.

(f) "Use" means either the receipt, delivery or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him, while such vehicle is within this state, or the consumption by a special fuel user of special fuels in propulsion of a motor vehicle on the highways of this state.

(g) "Special fuel dealer" means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him. For this purpose the term "fuel supply tank or tanks" does

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not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

(h) "Special fuel user" means any person other than a county, incorporated city or town or school district of this state, who consumes in this state special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(i) "Bond" means: (1) a bond duly executed by such special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana conditioned upon faithful performance of all requirements of this act, including the payment of all taxes, penalties and other obligations of such special fuel dealer or special fuel user arising out of this act; or (2) a deposit with the state treasurer by the special fuel dealer or special fuel user under such terms and conditions as the *department* may prescribe of a like amount of lawful money of the United States or bonds or other obligations of the United States or the state of Montana or of any county thereof, of an actual market value not less than the amount so fixed by the board."

Section 80. Section 84-1832, R.C.M. 1947, is amended to read as follows:

"84-1832. **Tax imposed.** There is hereby levied and imposed a tax on the use of each and every gallon of special fuel in any motor vehicle while operated upon the highways, equivalent to the lawful tax levied on motor fuel under section 84-1832.1. Said tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such special fuel dealer from the special fuel user and shall be paid over to the *department* as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of the state and shall be paid over to the *department* by the special fuel user as hereinafter provided. The various counties, incorporated cities and towns and school districts of this state shall be exempt from the levy and imposition of this tax."

Section 81. Section 84-1832.1, R.C.M. 1947, is amended to read as follows:

"84-1832.1. **Tax to be collected on diesel fuel and liquid petroleum gas, when.** The state *department of revenue* shall, under the provisions of rules and regulations issued by *the department*, collect or cause to be collected from the owners or operators of

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motor vehicles a tax in an amount equal to nine cents ($.09) for each gallon of diesel fuel or other volatile liquid, of less than forty-six degrees (46°) A.P.I. (American Petroluem Institute) gravity test, and seven cents ($.07) for each gallon of liquid petroleum gas when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state of Montana, or used in motor vehicles, motorized equipment and the internal combustion of any and all engines including stationary engines used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipalitiess, or other political subdivisions."

Section 82. Section 84-1834, R.C.M. 1947, is amended to read as follows:

"84-1834. **Special fuel dealers' and special fuel users' records.** (a) Preparation of records and inspection of: Every special fuel dealer, special fuel user and every person importing, manufacturing, refining, dealing in, transporting or storing, special fuel in this state, shall keep such records, receipts and invoices and other pertinent papers, with respect thereto as the *department* may require, and shall produce them for the inspection of the *department* at any time during the business hours of the day.

(b) Retention of records: Said records, receipts, invoices and other pertinent papers shall be required to be kept for a period of at least five (5) years from the date on which the return to which they relate was required to have been made."

Section 83. Section 84-1835, R.C.M. 1947, is amended to read as follows:

"84-1835. **Returns and payments.** (a) Returns: For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer and each special fuel user shall file with the *department,* on forms prescribed by said *department,* a monthly tax return.

Upon annual application the *department* shall waive the filing of a monthly tax return of any special fuel user who establishes that such user's monthly tax liability is or will be ten dollars ($10) or less.

Such user shall make an annual report and return to the *department,* on forms prescribed by said *department* on or before the 25th day of January of each year hereafter. Should the *department* determine that a user filing annual returns as herein provided is delinquent in making reports and payments, it shall require such

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person to file monthly returns as herein provided. Such return, annual or monthly, shall contain a declaration by the person making the same, to the effect that the statements contained are true and are made under penalties of perjury, which declarations shall have the same force and effect as a verification. The return shall show such information as the *department* may reasonably require for the proper administration and enforcement of this act; provided, however, that if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly return to the *department* need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made. The special fuel dealer or special fuel user shall file the return on or before the twenty-fifth (25th) day of the next succeeding calendar month following the monthly period to which it relates; provided, however, that for good cause the *department* may grant a taxpayer a reasonable extension of time for filing, but not to exceed thirty (30) days.

Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail, shall be deemed filed and received by this state on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted, shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within thirty (30) days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

If any claim, statement, remittance or other document is sent by United States registered mail, certified mail or certficate of mailing, a record authenticated by the United States Post Office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was mailed to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

If the final filing date falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final filing

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date. Such reports shall be considered filed or received on the date or as provided in this chapter.

(b) Computation: The tax imposed by this act shall be computed as follows: (1) with respect to special fuel used by the seller thereof as a special fuel dealer, by multiplying the tax rate per gallon provided in this act by the number of gallons of special fuel delivered or placed by him into the supply tank or tanks of a motor vehicle, (2) with repsect to special fuel as to which the tax has not been paid to a special fuel dealer in this state and which has been consumed by the purchaser thereof as a special fuel user, by multiplying the tax rate per gallon provided in this act by the number of gallons of special fuel consumed by him in the propulsion of motor vehicles on the highways of this state.

(c) Payments: The monthly tax return shall be accompanied by remittance covering the tax due hereunder on account of the use as defined in 84-1831(f) of special fuels during the preceding month.

(d) Refusal or failure to file return or pay tax when due: In case of any special fuel dealer or special fuel user who refuses or fails to file a return required by this act within the time prescribed by subsection (a) of this section, there is hereby imposed a penalty of twenty-five dollars ($25) or a sum equal to twenty-five per cent (25%) of the tax due, whichever is greater, together with interest at the rate of one per cent (1%) on the tax due, for each calendar month or fraction thereof during which such refusal or failure continues; provided, however, that if any such special fuel dealer or special fuel user shall establish to the satisfaction of the *department* that his failure to file a return within the time prescribed was due to reasonable cause, the *department* shall waive the penalty provided by this subsection.

(e) Failure to pay tax: Where a special fuel dealer or a special fuel user files a return, but fails to pay in whole or in part the tax due hereunder, there shall be added to the amount due and unpaid, interest at the rate of one per cent (1%) per month or fraction thereof, from the date such tax was due to the date of payment in full thereof.

(f) Deficiency: If it be determined by the *department* that the tax reported by any special fuel dealer or special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of one per cent (1%) per month or fraction thereof from the date the return was due.

(g) Determination if no return made: If any special fuel dealer or special fuel user, whether or not he is licensed as such, fails, neglects, or refuses to file a special fuel tax return when due,

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the *department* shall, on the basis of information available, to it, determine the tax liability of the special fuel dealer or special fuel user for the period during which no return was filed, and to the tax as thus determined, the *department* shall add the penalty and interest provided in subsection (d) above.

An assessment made by the *department* pursuant to this subsection or to subsection (f) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(h) Fraudulent return: If any special fuel dealer or special fuel user shall file a false or fraudulent return with intent to evade the tax imposed by this act, there shall be added to the amount of deficiency determined by the *department* a penalty equal to twenty-five per cent (25%) of the deficiency together with interest at one per cent (1%) per month, or fraction thereof, on such deficiency from the date such tax was due to the date of payment, in addition to all other penalties prescribed by law.

(i) Limitation: Except in the case of a fraudulent return or of neglect, or refusal to make a return, every deficiency shall be assessed under subsection (f) above within five (5) years after the twenty-fifth day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within five (5) years after the return is filed, whichever period expires the later.''

Section 84. Section 84-1837, R.C.M. 1947, is amended to read as follows:

"84-1837. **Procedures for credits.** Should a licensed special fuel user or licensed special fuel dealer desire to receive refund of special fuel taxes or of the temporary permit fee, the user or dealer shall make a signed and written request to the *department* requesting those amounts then due. Any amount determined to be creditable by the *department* under section 84-1836 shall first be credited on any amounts then due and payable from the special fuel dealer or special fuel user to whom the refund is due, and the *department* shall then certify the balance to the credit of the dealer or user, and a warrant shall be drawn upon the state treasurer for the amount of such claim and same shall be paid in the same manner as other claims against the state are paid.

Provided however, in case any special fuel user or special fuel dealer fails or neglects to file a request for refund of special fuel taxes within twelve (12) months from the date his special fuel

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license became canceled, the *department* shall be under no obligation to make a refund."

Section 85. Section 84-1838, R.C.M. 1947, is amended to read as follows:

"84-1838. **Administration.** (a) Rules and regulations: The *department* shall enforce the provisions of this act, and may prescribe, adopt and enforce reasonable rules and regulations relating to the administration and enforcement thereof.

(b) Examination of records: The department or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any special fuel dealer or special fuel user or any person dealing in, transporting, or storing special fuel as defined in this act and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand, they shall be furnished to the *department* for review and shall be accompanied by the special fuel dealer or special fuel user or such dealer or user shall bear the reasonable cost of examination by an agent authorized or designated by the *department* at the place where such books or records are kept provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of said examination is the payment of a tax deficiency.

(c) Evidence: For the purpose of enforcing the provisions of this act, the fact that a special fuel dealer or a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles shall be prima facie evidence that all of such special fuel has been delivered by the special fuel dealer or special fuel user into the fuel supply tanks of motor vehicles and consumed in the propulsion of motor vehicles upon the highways as herein defined unless the contrary shall be established by satisfactory evidence.

(d) Reciprocal exchange of data: The *department* shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces of the Dominion of Canada, forward to such officals any information which it may have relative to the receipt, storage, delivery, sale, use or other disposition of special fuel by any special fuel dealer or special fuel user, provided such other state or states furnish like information to this state."

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Section 86. Section 84-1841, R.C.M. 1947, is amended to read as follows:

"84-1841. **Judicial review and appeals.** Any determination of the *department* hereunder may be reviewed by the district court of Lewis and Clark county, and an appeal may be taken from the judgment of said district court to the supreme court."

Section 87. Section 84-1842, R.C.M. 1947, is amended to read as follows:

"84-1842. **Special fuel user's temporary trip permits—agents by whom issued.** Any person operating a special fuel-powered vehicle upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by section 84-1833, shall be required to purchase a special fuel user's temporary permit. The permits will be issued by scale house personnel, gross vehicle weight (g.v.w.) patrol crews, Montana highway patrolmen, and such other enforcing agents as the *department of revenue* may prescribe by order, rule or regulation."

Section 88. Section 84-1843, R.C.M. 1947, is amended to read as follows:

"84-1843. **Fees for temporary permits—time of expiration—disposition of fees—forms.** The temporary special fuel permits shall cost the special fuel vehicle user a fee of twenty dollars ($20.00); said permit shall be valid for a period of time not to exceed seventy-two (72) hours and will be automatically void should said vehicle leave the state of Montana during the seventy-two (72) hour period. All fees collected will be remitted to the state *department of revenue.* Special fuel temporary permits, remittance forms and any other necessary papers for the accounting and enforcement of this act shall be furnished by the state *department of revenue.*"

Section 89. Section 84-1844, R.C.M. 1947, is amended to read as follows:

"84-1844. **Penalty for operation without temporary permit — compliance bonds.** Any unlicensed user of special fuel vehicles operating within the state of Montana, without making application for said temporary permit, and paying the specified fee, shall be guilty of committing a misdemeanor and upon conviction, be fined fifty dollars ($50). Nothing contained herein shall affect the existing policy of accepting a compliance bond to be retained for use by the state *department of revenue* and to be imposed at the discretion of the enforcing agency."

Section 90. Section 84-1847, R.C.M. 1947, is amended to read as follows:

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"84-1847. **Gasoline license tax—amount.** Every distributor shall pay to the state *department of revenue* a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to one cent (1¢) for each gallon of aviation gasoline, which shall be allocated to the aeronautics commission as provided by section 1-501, R.C.M. 1947, as amended, and seven cents (7¢) for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor. Gasoline exported or sold for export out of the state of Montana shall not be included in the measure of the distributor's license tax."

Section 91. Section 84-1849, R.C.M. 1947, is amended to read as follows:

"84-1849. **Distributors' statements—payment of the tax.** Each distributor shall, not later than the twenty-fifth day of each calendar month render a true statement to the state *department of revenue,* duly signed, of all gasoline distributed and received by him in this state during the preceding calendar month, and containing such other information as the state *department of revenue* may reasonably require in order to administer the gasoline license tax law. The statement shall be accompanied by a payment in an amount equal to the tax imposed by section 3 (84-1847) of this act, less any refund credit issued under section 11 (84-1855) of this act, and less two per cent (2%) of the first six cents (6¢) tax which shall be deducted by the distributor as an allowance for evaporation and other loss of gasoline distributed by such distributor; provided, however, that no such allowance shall be deducted from the one cent (1¢) tax on aviation gasoline.

Any distributor engaged in or carrying on his business at more than one (1) place or location in this state may include all such places of business in one (1) statement."

Section 92. Section 84-1850, R.C.M. 1947, is amended to read as follows:

"84-1850. **Examination of records.** The *department,* or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this act and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand they shall be furnished to the *department* for review or such dealer shall bear the reasonable cost of examination by an agent authorized or desig-

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nated by the *department* at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of such examination is the payment of a tax deficiency."

Section 93. Section 84-1851, R.C.M. 1947, is amended to read as follows:

"84-1851. **Records to be kept.** Each distributor or any other person dealing in, transporting, receiving or storing gasoline shall keep for a period not to exceed three (3) years such records, receipts and invoices and any other pertinent papers and information as the state *department of revenue* may require."

Section 94. Section 84-1852, R.C.M. 1947, is amended to read as follows:

"84-1852. **Inspection of records.** The records, receipts and invoices and any other pertinent papers supporting sales of every distributor or any person dealing in, transporting or storing gasoline shall be open and subject to inspection by the state *department of revenue* or any of its employees or assistants during business hours in order to ascertain the amount of license tax due."

Section 95. Section 84-1853, R.C.M. 1947, is amended to read as follows:

"84-1853. **Invoice of distributors and aviation dealers.** Each distributor and aviation dealer in this state shall at the time of delivery, except where authorized by the *department,* issue to the purchaser an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and such other information as the state *department of revenue* may require."

Section 96. Section 84-1854, R.C.M. 1947, is amended to read as follows:

"84-1854. **Information reports.** Any person receiving gasoline, including every common carrier, private carrier and contract carrier of property who shall haul, receive, transport, or ship any gasoline, from any other state or foreign county into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the *department of revenue* upon its request and within the time specified a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of such products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and

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addresses of the consignor and the consignee and the date of delivery to the consignee.

In case of any person, except licensed distributors, who refuses or fails to file a statement as herein provided for, there is hereby imposed a penalty of twenty-five dollars ($25) for each failure or refusal, provided, however, that if any person shall establish to the satisfaction of the *department* that his failure to file a statement as prescribed by the *department* was due to reasonable cause, the *department* shall waive the penalty."

Section 97. Section 84-1855, R.C.M. 1947, is amended to read as follows:

"84-1855. **Refund of gasoline license tax-procedure.** (1) Any person who shall purchase and use any gasoline, on which the Montana gasoline license tax has been paid, for operating or propelling stationary gasoline engines, tractors used off the public highways and streets, motorboats, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, shall be allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Provided, that such refund or drawback should in no instance exceed the tax paid or to be paid, to the state of Montana [, and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the state aeronautics commission by section 1-501, R.C.M. 1947].

Any distributor paying the gasoline license tax to this state erroneously shall be allowed a credit or refund of the amount of tax so paid.

The application for refund shall be a signed statement on a form furnished by the *department,* accompanied by the invoice or invoices issued to the claimant, showing the total amount of gasoline purchased, the total amount of gasoline on which a refund is claimed, and the amount of the tax claimed for refund. Such further information pertaining to such claim shall be furnished as required by the *department,* provided that mileages of vehicles, where not verifiable by mechanical recorders, may be estimated by the applicant under regulations adopted by the board. Such regulations adopted by the *department* may include provisions for refunding taxes on gasoline used by licensed commercial vehicles off the highway. On the reverse of the applicant's copy of such form shall be printed the instructions and rules of the *department* pertaining to completion of the form. If any invoice is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the *department.*

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(2) All applications for refunds shall be filed with the *department of revenue* within fourteen (14) months after the date on which the gasoline was purchased as shown by invoices or after the date on which the tax was erroneously paid. Provided, however, that a distributor may file a claim for refund of taxes erroneously paid within three (3) years after the date of such erroneous payment. The *department* shall have one hundred twenty (120) days after receiving the claim to approve or reject it. If approved, the *department* shall issue a credit in lieu of refund for the amount of the claim, if the claimant is a distributor. For all other persons, a warrant shall be drawn upon the state treasurer for the amount of the claim.

(3) Should the *department of revenue* find that the statement contains errors which are not fraudulently inserted, it may correct the statement and approve it as corrected, or the *department* may require the claimant to file an amended statement. If the state *department of revenue* determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the *department* may reject such claim in full. If a claim is rejected, the *department* may suspend claimant's right to refund for a period not to exceed one (1) year.

(4) Any person, other than a licensed distributor, desiring to claim refund on gasoline purchased shall obtain a permit from the state *department of revenue.* The application for permit shall contain the applicant's name, address, occupation, nature of business, identification of machinery and equipment in which the taxable motor fuel is to be used, and any other information which may be required by the *department.*

(5) Each permit issued shall bear a permit number and each claim filed shall bear the permit number of the claimant. The state *department of revenue* shall keep a record of all permits issued and a cumulative record of refunds claimed and paid thereunder.

A fee of one dollar ($1) shall be collected from each person to whom a refund permit is issued. No refund shall be paid to any person unless said person has first secured a refund permit and paid said fee. The refund permit must be renewed and the license fee paid every five (5) years from the date of issuance.

(6) Any person, other than a licensed distributor, shall obtain a permit from the state *department of revenue* prior to selling gasoline on which a refund may be claimed. The application for permit shall contain the applicant's name, address, place or places

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of business in the state of Montana, and other information which may be required by the *department*. Permits issued shall bear a permit number and the date of issuance. The *department* shall keep a record of all permits issued, canceled, or suspended. Permits shall be issued for the calendar year upon payment of a fee of one dollar ($1) and must be renewed annually before the first day of January.

Any person failing to comply with this subsection shall be subject to a fine of not less than twenty-five dollars ($25) or more than two hundred dollars ($200) or imprisonment in the county jail for a period not less than ten (10) days or more than sixty (60) days, or both fine and imprisonment."

Section 98. Section 84-1857, R.C.M. 1947, is amended to read as follows:

"84-1857. **License and bond of gasoline distributors.** All gasoline distributors prior to the commencement of doing business shall file an application for a license with the state *department of revenue* on forms prescribed and furnished by the *department* setting forth the information as may be requested by the *department*. Each distributor shall at the same time file a corporate surety bond or such collateral security or indemnity as may be deemed sufficient by the state *department of revenue,* but in no case more than twice the estimated amount of gasoline taxes the distributor will pay to this state each month. Upon approval of the application, the state *department of revenue* shall issue to the distributor a nonassignable license which shall continue in force until surrendered or canceled."

Section 99. Section 84-1858, R.C.M. 1947, is amended to read as follows:

"84-1858. **Penalties—delinquent payment—procedure in case of failure to file statement or pay tax—lien for tax.** Any license tax not paid within the time provided shall be delinquent and a penalty of ten per cent (10%) shall be added to the tax and the tax shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. Upon a showing of good cause by the distributor, the *department* may waive penalty.

If any distributor or other person subject to the payment of such license tax shall willfully fail, neglect, or refuse to make any statement required by this act, or shall willfully fail to make payment of such license tax within the time provided, the state *department of revenue* shall be authorized to revoke any license issued under this act. In addition, the *department* shall inform itself regarding the matters required to be in such statement and

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determine the amount of the license tax due the state from such distributor, and shall add thereto a penalty of twenty-five dollars ($25) or ten per cent (10%) thereof, whichever is greater, together with interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer shall proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax. All license taxes, penalties and interest due from any distributor under the provisions of this act, shall be a lien upon any and all property of such distributor or other person upon the filing by the state *department of revenue* of a copy of its statement, or a certified copy of any statement filed with the *department,* in the office of the county clerk of the county where the distributor's property is situated. The lien shall have precedence over any other claim, lien or demand filed or recorded thereafter. The lien may be enforced in the name of this state in the same manner as judgment liens are enforced. No action shall be maintained to enjoin the collection of all or any part of the license tax. When the amount due is paid in full before the entry of foreclosure decree, the state treasurer shall release the lien by filing in the office of the county clerk where the lien was filed, a written release. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of the lien a part of the distributor's property to enable the distributor to mortgage, sell or otherwise dispose of it in order to procure funds to pay taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to the lien to ensure the payment of all the unpaid taxes, penalty and interest."

Section 100. Section 84-1861, R.C.M. 1947, is amended to read as follows:

"84-1861. **Rules and regulations to be established by state** *department.* The state *department of revenue* shall have the power, and it shall be its duty to adopt, publish and enforce the rules and regulations consistent with and necessary for carrying out the provisions of this act."

Section 101. Section 84-2003, R.C.M. 1947, is amended to read as follows:

"84-2003. **Gross value of products, how determined.** The total "gross value of product" as used in this act, shall mean the market value of all merchantable metals, precious and semiprecious gems

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and stones extracted or produced, each year from any mine or mining property in the state of Montana or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from any such mine or mining property or from tailings resulting from the smelting, reduction or treatment of any such ores. That whenever the ores require smelting, reduction, or treatment to ascertain the metal contents of such ores, the gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby, as shown by the gross smelter returns of such metals or mineral product in dollars and cents, without any deductions for costs of smelting, reduction or treatment, or otherwise, based upon the average quotations of the price of such metals, or mineral products, in the city of New York, as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York City, or other standard publications, giving the market reports during the calendar year immediately preceding. Should there be no quotation covering any particular product, then the state *department of revenue* shall fix the value of such gross product, or such portion thereof, in such a manner as may seem equitable."

Section 102. Section 84-2005, R.C.M. 1947, is amended to read as follows:

"84-2005. **Statement of gross value of product.** Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones are produced, must, not later than the fifteenth day of April, in such year when engaged in or carrying on any such business, work or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar year immediately preceding. Such statement shall be in the form prescribed by the state *department of revenue,* and must be verified by the oath of such person, or the manager, superintendent, agent, president or vice-president of the corporation, joint stock or other company or syndicate and must be delivered to the state *department of revenue* not later than the fifteenth day of April. Such statement shall show the following:

1. The name and address of the owner or lessee of the mine or mining property.

2. The description and location of the mine or mining property.

3. The number of tons of ore or other mineral products or

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deposits extracted from the mine or mining property during the period covered by the statement.

4. The name and location of the smelter, mill or reduction works to which such ore has been shipped or sold during the period covered by the statement and such other information as the state *department of revenue* may require.

5. The gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by the statement.

6. The gross value of product in dollars and cents."

Section 103. Section 84-2006, R.C.M. 1947, is amended to read as follows:

"84-2006. **Computation and notice of tax.** The state *department of revenue* shall examine each such statement and return filed and determine and ascertain therefrom, and compute and assess the amount of the license tax to be paid by the person making and filing the same, and shall, not later than the first day of June, certify to the state treasurer the name of each person subject to the payment of license taxes under the provisions of this act, the amount thereof to be paid by such person. The said *department* shall at the same time mail to each person making and filing such statement and return, a written notice of the amount of the license tax to be paid by each, respectively, that the same is due and payable to the state treasurer, and that it will become delinquent at five o'clock p.m. on the thirtieth day of June, immediately following, and that if the same becomes delinquent a penalty of ten per centum will be added thereto, and that the whole amount of such license tax, with penalty added, will bear interest at the rate of twelve per centum per annum from the date the same becomes delinquent until paid. If any such person, has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state *department of revenue* shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York, or some other standard publication, giving the market

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reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state *department of revenue* shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such an manner as may seem to be equitable."

Section 104. Section 84-2008, R.C.M. 1947, is amended to read as follows:

"84-2008. **Procedure in case of failure to file statement.** If any person shall fail, refuse or neglect to make and file such statement and return within the time prescribed, the state *department of revenue,* shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state, and from any other information which the *department* may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the license tax is to be paid, and license issued, and shall make and file a statement showing the amount of such gross value of product and shall ascertain and determine and compute and assess the amount of the license taxes due from, and to be paid by such person, and shall immediately certify the same to the state treasurer, and give notice to such person in the same manner as though such statement had been filed within time, and the state shall proceed to collect such license tax, adding thereto and collecting therewith, if the same is delinquent, the same penalty and interest as provided for herein for other delinquencies."

Section 105. Section 84-2011, R.C.M. 1947, is amended to read as follows:

"84-2011. **Lien of tax.** The license tax assessed against any person under this act, together with all penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and used by such person in connection with such business, which lien shall attach to such property on the date when the license tax is certified to the state treasurer by the state *department of revenue* and such lien may be enforced in the name of the state of Montana, in the same manner as other liens are enforced at law."

Section 106. Section 84-2012, R.C.M. 1947, is amended to read as follows:

"84-2012. **License.** Whenever any license tax is paid under

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the provisions of this act the state *department of revenue* shall issue to the person paying the same a license authorizing such person to engage in and carry on such business until the first day of January immediately following the year for which such license tax is paid and such license issued."

Section 107. Section 84-2013, R.C.M. 1947, is amended to read as follows:

"84-2013. **Commencing business.** If any person shall, after the first day of January of any year, engage in or commence the carrying on of the business of working or operating a mine or mining property in this state, from which any merchantable metal, precious, and semiprecious gems and stones are extracted and produced, such person, must, within sixty days after so engaging in or commencing to carry on such business, notify both the state *department of revenue* and the state treasurer of such fact.''

Section 108. Section 84-2016, R.C.M. 1947, is amended to read as follows:

"84-2016. **Dissolved corporations to make returns on operation of mines and pay metals mines tax due.** Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by law to be made with reference to the carrying on of the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones, are produced and pay the tax due for such period as it carried on such business, on or before the date of such dissolution or cessation of business. The state *department of revenue* may grant a reasonable extension of time for filing returns upon good cause shown therefor."

Section 109. Section 84-2104, R.C.M. 1947, is amended to read as follows:

"84-2104. **Certificate to be filed with *department*—time for filing—contents of certificate.** Each and every person engaged in any such business in the state of Montana at the time when this act becomes effective must not, later than the thirtieth day of April, 1933, and every person who shall engage in any such business at any time after the date when this act becomes effective, immediately, upon engaging in any such business, file with the state *department of revenue* a certificate and statement, on forms prescribed by the state *department of revenue,* which shall contain the name under which such person is engaged in carrying on such business in this state, giving the place or places of business and the location of the well or wells, plant or property, owned, leased, con-

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trolled or operated by such person in such business; the name and address of the managing agent in this state if an association, corporation, joint-stock company or syndicate, or if a firm or copartnership, the names and addresses of the persons composing the same, of an association, joint-stock company, corporation or syndicate, the laws of the state under which organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the *department* may deem necessary."

Section 110. Section 84-2105, R.C.M. 1947, is amended to read as follows:

"84-2105. **Records to be kept as required by** *department.* Every such person shall keep a record, in such form as the state *department of revenue* may require, of all natural gas extracted or produced, transported or carried, sold, furnished or delivered by such persons in this state and such records shall at all times during the business hours of the day, be subject to inspection of the state *department of revenue,* its members, agents or employees."

Section 111. Section 84-2106, R.C.M. 1947, is amended to read as follows:

"84-2106. **Statement of distributed gas—payment of tax—state treasurer's duty—examination and computing of tax by** *department* **—adjustment of excess payment or deficit.** (1) Each and every person must, within thirty (30) days after the quarterly period ending March 31, 1933, and within thirty (30) days after the end of each following quarterly period, make out, in duplicate, on forms prescribed by the state *department of revenue,* and deliver to the state treasurer, a statement showing the quantity of merchantable or marketable gas produced or extracted, transported or carried, sold, furnished or delivered by such person in the state of Montana during each month of each quarterly period and during the whole of said quarterly period, together with total amount due the state as license tax for such quarterly period; and must, within such thirty (30) days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the quarterly period for which such statement is made; such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in or carrying on such business at more than one (1) place in this state, or owning, controlling or operating more than one (1) natural gas well or plant for the distribution of natural gas in this state, may include all thereof in one (1) statement. The state treasurer shall receive and file all such statements and collect

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and receive from such person making and filing a statement with him, the amount of tax payable by such person, if any, as the same shall appear from the face of the statement. The state treasurer shall endorse on each statement as soon as the same is received by him, the date when so received, and the name and post-office address of the person from whom received; and the amount of tax, if any, paid by such person; and he must number such statement consecutively, beginning with number one (1) for each year followed by the year.

(2) The state treasurer shall keep a book in such form as shall be approved by the state *department of revenue,* in which he shall enter such statement filed with him in the order in which received and filed, the number thereof, date of filing, name of person making the return and the amount of tax, if any, paid by such person, which book shall be designated "state treasurer's record of natural gas license tax." The state treasurer shall within ten (10) days after the end of each month deliver over to the state *department of revenue* all statements filed with him and not already delivered to said *department,* and such statements shall then be filed in the office of, and become a part of the records of the state *department of revenue.*

(3) It shall be the duty of the state *department of revenue* to examine each of such statements and compute the taxes thereon, and the amount so computed by the *department* shall be the taxes imposed, assessed against and payable by the person making the statement for the quarterly period for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the state *department of revenue* within ten (10) days after written notice of the amount of the deficiency shall be mailed by the state *department of revenue* to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be refunded to the person making such payment."

Section 112. Section 84-2108, R.C.M. 1947, is amended to read as follows:

"84-2108. *Department* **to determine tax if no statement filed—penalty and interest—collection of tax.** If any such person shall fail, neglect or refuse to file any statement required by the provisions of this act within the time therein required, the state *department of revenue* shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the quantity of natural gas extracted and produced, transported or carried, sold, furnished or delivered by such person in this state during such quarterly period and during each month thereof, and shall determine and fix the amount of the license tax due the state from such person

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for such quarterly period and shall make out a statement, in duplicate, showing the same and shall add to the amount of such license tax a penalty of twenty-five (25) per cent thereof and deliver one (1) of such statements to the state treasurer, who shall proceed to collect the amount of such license tax, with penalty added thereto, and the interest on the whole thereof at the rate of twelve (12) per cent per annum from the date of making such statement by the state *department of revenue,* until paid.

Upon the request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action at law for the collection of the same."

Section 113. Section 84-2203, R.C.M. 1947, is amended to read as follows:

"84-2203. **Payment of tax.** Such license tax shall be paid in quarterly installments for the quarterly periods ending respectively March 31, June 30, September 30 and December 31, of each year, and the amount of the license tax for each quarterly period shall be paid to the state *department of revenue* within thirty (30) days after the end of each quarterly period."

Section 114. Section 84-2204, R.C.M. 1947, is amended to read as follows:

"84-2204. **Determination of gross value of product.** The total gross value of all petroleum, and other mineral or crude oil produced each year shall be determined by taking the total number of barrels thereof produced each month during such year at the average value at the mouth of the well during the month the same is produced, as determined by the state *department of revenue;* provided, however, that in computing the total number of barrels of petroleum, and other mineral or crude oil produced, there shall be deducted therefrom so much thereof as is used by such person in connection with the operation of the well from which said oil is produced or for pumping said petroleum or other mineral or crude oil from the said well to a tank or pipeline."

Section 115. Section 84-2205, R.C.M. 1947, is amended to read as follows:

"84-2205. **Producers to file reports.** Each and every person engaged in such business in the state of Montana at the date when this act becomes effective, must, not later than the thirtieth day of April, 1923, and every person who shall engage in such business at any time after the date when this act becomes effective, must, immediately upon engaging in such business, file with the state *department of revenue,* a certificate and statement, on forms pre-

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scribed by the state *department of revenue,* which shall contain the name under which such person is engaging in and carrying on such business in this state, giving the place or places of business and location of the well or wells owned, leased, controlled or operated by such person; the name and address of the managing agent in this state, if an association, corporation, joint-stock company, or syndicate, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company, corporation or syndicate, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the *department* may deem necessary."

Section 116. Section 84-2206, R.C.M. 1947, is amended to read as follows:

"84-2206. **Record of product—carriers to furnish data.** Every such person shall keep a record in such form as the state *department of revenue* may require, of all petroleum and other mineral or crude oil extracted or produced by such person in this state, and such records shall at all times during the business hours of the day be subject to inspection by the state *department of revenue,* its members, agents, or employees. It shall be the duty of railroad companies, pipeline and transportation companies carrying crude or mineral oil, to furnish to the state *department of revenue,* whenever requested so to do, all data relative to the shipment of said products, that may be required to properly enforce the provisions of this act. The failure of any railroad company, pipeline, and transportation companies to comply with the provisions of this section shall make such companies liable to a penalty of one hundred dollars ($100.00) for each day it shall fail to furnish such statement."

Section 117. Section 84-2207, R.C.M. 1947, is amended to read as follows:

"84-2207. **Statement to accompany payment—records—collection of tax—refunds.** (1) Each and every person must, within thirty days after the quarter ending March 31, 1923, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state *department of revenue,* and deliver to the state treasurer, a statement showing the total number of barrels of merchantable or marketable petroleum, and other mineral or crude oil produced or extracted by such person in the state of Montana during each month of such quarter and during the whole quarter, the average value thereof during each month and the total value thereof for the whole quarter, together with the total amount due to the state as license taxes for such quarter; and must, within such thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the

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amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in carrying on such business at more than one place in this state, or owning, leasing, controlling, or operating more than one oil well in this state, may include all thereof in one statement. The state treasurer shall receive and file all such statements and collect and receive from such person making and filing a statement with him the amount of tax payable by such person, if any, as the same shall appear from the face of the statement.

(2) The state treasurer shall endorse on each statement as soon as the same is received by him, the date when so received, the name and post-office address of the person from whom received; and the amount of tax, if any, paid by such person; and he must number such statement consecutively, beginning with number one (1) for each year followed by the year. The state treasurer shall keep a book in such form as shall be approved by the state *department of revenue,* in which he shall enter each statement filed with him in the order in which received and filed, the number thereof, date of filing, name of person making the return, and the amount of tax, if any, paid by such person, which book shall be designated "state treasurer's record of oil production license tax."

(3) The state treasurer shall within ten days after the end of each month deliver over to the state *department of revenue* all statements filed with him and not already delivered to said board, and such statements shall then be filed in the office of, and become a part of the records of the state *department of revenue.* It shall be the duty of the state *department of revenue* to examine each of such statements and compute the taxes thereon, and the amount so computed by the *department* shall be the taxes imposed, assessed against and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the state *department of revenue* within ten days after written notice of the amount of the deficiency shall be mailed by the *department of revenue* to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be refunded to the person making such payment."

Section 118. Section 84-2209, R.C.M. 1947, is amended to read as follows:

"84-2209. **Procedure to compute and collect tax in absence of statement.** If any such person shall fail, neglect or refuse to file

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any statement required by section 84-2207, within the time therein required, the state *department of revenue* shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of barrels of petroleum and other mineral or crude oil extracted and produced by such person in this state during such quarter, and during each month thereof, and the average value thereof during each such month, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter and shall make out a statement, in duplicate, showing the same, and shall add to the amount of such license taxes a penalty of twenty-five per cent thereof, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent, per annum from the date of the making of such statement by the state *department of revenue* until paid. Upon request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same. The twenty-five per cent penalty herein provided may be waived by the state *department of revenue* if reasonable cause for the failure and neglect to file the statement required by section 84-2207 is provided to the said *department.*''

Section 119. Section 84-2301, R.C.M. 1947, is amended to read as follows:

"84-2301. **Definitions.** The term *"department"* when used in this act shall mean the state *department of revenue.*

Any person, persons, copartnership, joint-stock company, association, or corporation (not being a railroad compay or a lessee of a railroad company) wherever organized or incorporated, owning and operating, or operating any cars known as dining, buffet, chair, parlor, palace or sleeping cars, which are used upon railroads within this state, unless the ownership of such cars be identical with that of the lines of railroads on which they are operated, shall be deemed a sleeping car company for the purposes of this act.''

Section 120. Section 84-2302, R.C.M. 1947, is amended to read as follows:

"84-2302. **Reports.** Every sleeping car company shall annually on or before the first day of March and in such forms and covering such period as the state *department of revenue* shall prescribe, make and file with it a statement verified by the oath of the person, agent or officer making the same, setting forth the facts called for. Such report shall contain:

(1) The name of the company.

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(2) The nature of the company, whether a person, agent, trustee, lessee, receiver, or other person, or a joint-stock company, partnership, association, or corporation.

(3) The location of its principal office, and under the laws of what state or country organized, and when.

(4) The name and address of the president, secretary, auditor, treasurer and superintendent or general manager.

(5) The name and address of its chief officer or managing agent in Montana.

(6) Its capital stock:

(a) The amount authorized.

(b) The amount issued.

(c) The amount of capital stock invested in its sleeping car business.

(7) The number of shares of stock:

(a) Outstanding.

(b) Not issued.

(c) Treasury; and whether common or preferred.

(8) The amount of the bonds outstanding; when issued; when due, and the rate of interest of each issue.

(9) The par market value of the stocks and bonds issued and outstanding.

(10) The whole length and the names of railroad lines over which its cars were transported in the state of Montana.

(11) The total car mileage and the car mileage within this state.

(12) The gross and net earnings during the year.

(13) Such other facts and information as such company or the state *department of revenue* may deem material upon the question of the true and full value of said property within this state. *The department* shall furnish forms upon which to make such reports."

Section 121. Section 84-2303, R.C.M. 1947, is amended to read as follows:

"84-2303. **Assessment.** The state *department of revenue* shall carefully consider all reports made pursuant to section 84-2302 and all other facts and evidence collected and available, and shall

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fix the valuation of the property of sleeping car companies operating in the state for the purpose of levying and collecting license taxes thereon, as hereinafter provided."

Section 122. Section 84-2304, R.C.M. 1947, is amended to read as follows:

"84-2304. **Method of determining valuation.** (1) It shall find, ascertain, and determine the actual value in money of the entire amount of capital stock of each such company invested in its sleeping car business, and when the value of the capital stock cannot be reliably ascertained it shall find, ascertain and determine the value of the entire property used in said business. From the amount so obtained, it shall deduct the actual value of its real estate situate without this state not used in said business, and also the actual value of all its personal property, not used in said business. The remainder shall be taken and considered as the actual value of the capital stock of such company invested or used in its business.

(2) The *department* shall then divide the amount so obtained by the total car mileage on railroads over which the company did business to obtain the value per car mile, and shall then multiply the value per car mile thus obtained by the total number of car miles within this state. The result shall be taken and considered as the actual value of the property of such company subject to the license tax in this state, subject to review as provided in section 84-2305."

Section 123. Section 84-2305, R.C.M. 1947, is amended to read as follows:

"84-2305. **Notice of hearing concerning valuation—right to appear and be heard.** The *department* shall thereupon give notice to the officer of such company attesting its report of the time and place such company may appear and be heard in respect to such valuation to be made upon its property. After such hearing the *department* may make such changes in its valuation as shall appear just and reasonable."

Section 124. Section 84-2306, R.C.M. 1947, is amended to read as follows:

"84-2306. **License tax—amount—levy—notice—payment.** The *department* shall thereupon levy a license tax upon the property of such sleeping car company at the rate of one and one-half per cent (1½%) on the valuation thus found by it for the use of the state, and the *department* shall certify such assessment and levy to the state treasurer, who shall thereupon, by registered letter, notify the officer attesting the report of such company, of the amount

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of the assessment, the rate of levy and the amount of the tax; and such company shall have thirty days after the mailing of such notice within which to pay said tax to the state treasurer. And such tax when paid shall be turned into the general fund of the state treasury."

Section 125. Section 84-2307, R.C.M. 1947, is amended to read as follows:

"84-2307. **Failure to report—nonpayment—action for collection.** (1) If any sleeping car company shall fail to make the report required of it by this act, the *department* shall proceed upon the best information it may be able to obtain to fix the valuation against such company and shall notify it by letter of the action taken in that behalf. Thereupon the company so notified may appear and be heard as above provided.

(2) All taxes remaining unpaid after notice from the state treasurer, as above provided, shall draw interest at the rate of fifteen per centum per annum after they are due, and upon such failure to pay, the attorney general shall proceed by action in the name of the state against such company to collect the same, together with interest and the cost of the suit.

(3) Any such company claiming to be aggrieved by the levy of a license tax upon its property, may, within six months from the payment of the tax, and not thereafter, bring and maintain an action against the state in the district court of Lewis and Clark county to recover such part of the tax so paid as shall exceed the amount the company should have paid. The state may be served with the summons in such action by delivering a copy thereof to the attorney general or leaving it at his office in the capitol with one of his assistants.

(4) But no such company shall be permitted to contest the validity of any tax assessed and levied against it, unless at or before the time of serving its complaint or answer, as the case may be, it shall deposit with the state treasurer the amount of such tax, together with interest thereon at the rate of fifteen per cent per annum as above provided. In case the amount of the tax justly and equitably due from such company shall be finally determined to be less than the amount so paid, the excess shall be refunded to such company by direction of the court by the state treasurer."

Section 126. Section 84-2308, R.C.M. 1947, is amended to read as follows:

"84-2308. **Estoppel—excusing failure to file report.** (1) If any company described in section 84-2301 or its officers or agents

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shall unreasonably refuse or neglect to make any report required by law or by the said *department,* or shall unreasonably refuse or neglect to answer any material question, or to permit an inspection of its records, books, accounts or papers when requested by said board, it shall be estopped to question or impeach the action or determination of the *department,* except upon satisfactory proof of fraud or mistake injurious to it.

(2) No such company shall be allowed in any action or proceeding to question the amount or valuation of its property and franchises as assessed by the *department,* unless it shall have made and filed with the *department* a full and complete report of the facts and information prescribed by law, and called for by the *department;* provided, that the refusal or neglect of such company to file its report in time may, on verified petition and for good cause shown, be excused by the *department* on condition that such company make a full and complete report disclosing all facts and information required of it within fifteen days after leave is given to file such report, and shall appear before the *department* and make full disclosure of all property liable to assessment and taxation under this act."

Section 127. Section 84-2309, R.C.M. 1947, is amended to read as follows:

"84-2309. **First imposition of tax.** The license tax shall be first imposed and paid for the whole calendar year 1923, and shall be based upon the reports as prescribed in section 84-2302 for the year 1922, and such report shall be made to the *department* by April first, 1923."

Section 128. Section 84-2401, R.C.M. 1947, is amended to read as follows:

"84-2401. **Store license from** *department of revenue* **required.** That it shall be unlawful for any person, firm, corporation, association or copartnership, either foreign or domestic, to open, establish, operate or maintain any store or stores in this state without first having obtained a license to do so from the state *department of revenue,* as hereinafter provided."

Section 129. Section 84-2402, R.C.M. 1947, is amended to read as follows:

"84-2402. **Application and fee for license.** Any person, firm, corporation, association, copartnership or group desiring to open, establish, operate or maintain a store in the state of Montana prior to September first of that calendar year shall apply to the state *department of revenue* for license to do so. The application shall be made upon a form which shall be prescribed and furnished

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by the state *department of revenue,* and shall set forth the name of the owner, manager, trustee, lessee, stockholders, receiver or other persons desiring said license; the name of such store; the location, including street number; and all such other facts as the state *department of revenue* may require.

If the applicant desires to open, establish, operate or maintain more than one such store, he shall make a separate application for a license to operate, maintain, open or establish each such store.

Each such application shall be accompanied by the license fee as prescribed in sections 84-2405, 84-2406 and 84-2407."

Section 130. Section 84-2403, R.C.M. 1947, is amended to read as follows:

"84-2403. *Department* **to consider application—issuance of license.** As soon as practicable after the receipt of any such application, the state *department of revenue* shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If, upon examination, the state *department of revenue* shall find that such application is not in proper form and does not contain the necessary and requisite information, it shall return such application for correction.

If an application is found to be satisfactory, and if the filing and license fee, as herein prescribed, shall have been paid, the state *department of revenue* shall issue to the applicant a license for each store for which an application for a license shall have been made.

Each licensee shall display the license so issued in a conspicuous place in the store for which such license was issued."

Section 131. Section 84-2404, R.C.M. 1947, is amended to read as follows:

"84-2404. **Expiration and renewal of licenses.** All licenses shall be so issued so as to expire upon the thirty-first day of December of each calendar year. On or before the thirty-first day of December of each calendar year, every firm, person, corporation, association, copartnership having a license, shall apply to the state *department of revenue* for a renewal license for the calendar year next ensuing. All applications for a renewal shall be made upon forms which shall be prescribed and furnished by the state *department of revenue.*

Each such application for a renewal license shall be accompanied by the license fee as prescribed in sections 84-2405, 84-2406 and 84-2407.

All licenses shall lapse on the thirty-first day of December of the year for which the license was issued, and if, by such thirty-first

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day of December, an application for a renewal license for the calendar year next ensuing has not been made, the fee charged shall be double the rate prescribed in sections 84-2405, 84-2406 and 84-2407."

Section 132. Section 84-2412, R.C.M. 1947, is amended to read as follows:

"84-2412. **Employment of help—disposal of license money.** The state *department of rèvenue* is hereby authorized to employ such clerical and field assistance as may be found necessary to carry out and to administer the provisions of this act. All money collected under the provisions of this act shall be paid into the state treasury, to the credit of the general fund."

Section 133. Section 84-2502, R.C.M. 1947, is amended to read as follows:

"84-2502. **Statement of gross income—contents—payment to accompany.** Each and every person, association or corporation engaged in carrying on such business in this state, shall, within thirty (30) days after the end of each quarter, beginning with the quarter ending March 31, 1934, make out in duplicate and file with the state *department of revenue,* under oath, a statement in such form as the state *department of revenue* may require and prescribe, showing the total gross income of such person, association or corporation derived from business within this state including the transmission of telegraph messages originating and terminating within this state, but excluding thereform the gross income derived from the transmission of telegraph messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within, this state and from those originating within, but terminating outside of, this state during the preceding quarter, and containing such other information as the state *department of revenue* may require; and shall accompany such statement with the payment to the state *department of revenue* of a license tax in amount equal to two per cent (2%) of such gross income."

Section 134. Section 84-2503, R.C.M. 1947, is amended to read as follows:

"84-2503. **Rules and regulations for enforcement may be adopted by** *department.* The state *department of revenue* shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act."

Section 135. Section 84-2505, R.C.M. 1947, is amended to read as follows:

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"84-2505. **Records to be kept as required by** *department.* Each person, association or corporation shall keep a record in such form as the state *department of revenue* shall require showing the total gross receipts, as herein described, and such other information as the state *department of revenue* may require."

Section 136. Section 84-2507, R.C.M. 1947, is amended to read as follows:

"84-2507. *Department* **to determine tax in case no statement filed—penalty and interest—collection of tax—perfection and enforcement of tax lien.** (1) If any person, association or corporation subject to the payment of such license tax shall fail, neglect or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state *department of revenue* shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent person, association or corporation, and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen percent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for nonpayment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action to collect such license tax.

(2) All license taxes due from any person, association or corporation under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such person, association or corporation upon the filing by the state *department of revenue,* of a duplicate copy of the statement so made by the state *department of revenue,* or a certified copy of any statement filed with said *department* in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as other liens are enforced

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by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof.

(3) When the amount due the state is paid in full and before the entry of foreclosure decree, the state treasurer shall release the said lien by filing, in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the person, association or corporation to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said license taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to said lien to insure the payment of the whole of said unpaid license taxes, penalty and interest."

Section 137. Section 84-2508, R.C.M. 1947, is amended to read as follows:

"84-2508. **Books and records to be open to inspection by board.** The books and records of every person, association or corporation shall be open and subject to inspection by the state *department of revenue* or any of its employees or assistants during business hours so far as may be necessary to ascertain the amount of license tax due."

Section 138. Section 84-2602, R.C.M. 1947, is amended to read as follows:

"84-2602. **Statement and payment on gross income—certain business excluded.** Each and every person, association or corporation liable to tax under this act engaged in carrying on such telephone business in this state shall, within sixty (60) days after the end of each quarter, beginning with the quarter ending June 30, 1969, make out in duplicate and file with the state *department of revenue,* under oath, a statement in such form as the state *department of revenue* may require and prescribe, showing the total gross income of such person, association or corporation derived from the telephone business within this state including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within this state and from those originating within but terminating outside of this state during the preceding quarter, and containing such other information as the state *department of revenue* may require; and shall accompany such statement with the payment to the state *department of revenue*

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of a license tax in the amount equal to one and seven hundred twenty-five thousandths per cent (1.725%)."

Section 139. Section 84-2603, R.C.M. 1947, is amended to read as follows:

"84-2603. *Department* **to adopt rules.** The state *department of revenue* shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act."

Section 140. Section 84-2605, R.C.M. 1947, is amended to read as follows:

"84-2605. **Taxpayer to keep records.** Each person, association or corporation liable to tax under this act shall keep a record in such form as the state *department of revenue* shall require showing the total gross receipts, as herein described, and such other information as the state *department of revenue* may require."

Section 141. Section 84-2607, R.C.M. 1947, is amended to read as follows:

"84-2607. *Department* **to levy tax on failure of taxpayer to make statement.** (1) If any person, association or corporation subject to the payment of such license tax shall fail, neglect or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state *department of revenue* shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent person, association or corporation, and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for nonpayment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action to collect such license tax.

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(2) All license taxes due from any person, association or corporation under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such person, association or corporation upon the filing by the state *department of revenue,* of a duplicate copy of the statement so made by the state *department of revenue,* or a certified copy of any statement filed with said *department* in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the state treasurer shall release the said lien by filing, in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the person, association or corporation to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said license taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to said lien to insure the payment of the whole of said unpaid license taxes, penalty and interest."

Section 142. Section 84-2608, R.C.M. 1947, is amended to read as follows:

"84-2608. **Books of taxpayer open to inspection.** The books and records of every person, association or corporation shall be open and subject to inspection by the state *department of revenue* or any of its employees or assistants during business hours so far as may be necessary to ascertain the amount of liccense tax due."

Section 143. Section 84-3503, R.C.M. 1947, is amended to read as follows:

"84-3503. **State** *department of revenue* **as registrar.** The state *department of revenue* of the state of Montana is hereby constituted the registrar for the purpose of this act, and is empowered to employ such assistance and to procure such records, supplies and equipment as may be necessary to carry out its provisions."

Section 144. Section 84-3513, R.C.M. 1947, is amended to read as follows:

"84-3513. **Retention of contract payments to pay assessments—transmittal to** *department of revenue*—**contractor to pay when funds not retained—refunds.** The state, county, city or any agency or

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department thereof, as described in section 84-3501 (b), for whom the contractor is performing public work, shall withhold, in addition to other amounts withheld as provided by law, one per cent (1%) of all payments due the contractor and shall transmit such moneys to the state *department of revenue.* In the event that the one per cent (1%) of gross receipts is not withheld as provided, the contractor shall make payment of these amounts to the state *department of revenue* within thirty (30) days after the date on which the contractor receives each increment of payment for work performed by the contractor. Any overpayment of the one per cent (1%) of gross receipts withheld, or paid by any contractor hereunder, shall be refunded by the state *department of revenue* at the end of the income year upon written application therefor."

Section 145. Section 84-3515, R.C.M. 1947, is amended to read as follows:

"84-3515. **State** *department of revenue* **to establish rules and regulations.** The state *department of revenue* shall establish rules and regulations necessary for the effective implementation of the provisions of this act, including, but not limited to, requiring public contractors to file a contractor's return showing public works contracts performed during a calendar year."

Section 146. Section 84-3516, R.C.M. 1947, is amended to read as follows:

"84-3516. **Failure to file contractor's license—penalty.** A person failing to file a contractor's license return as provided and required by the state *department of revenue,* upon conviction, shall be fined not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000)."

Section 147. Section 84-3803, R.C.M. 1947, is amended to read as follows:

"84-3803. **Rate of taxation fixed by state** *department.* The state *department of revenue* must, for state purposes, for each fiscal year fix an ad valorem rate of taxation upon each one hundred dollars of taxable property of the state, after allowing twelve per cent for delinquencies in the taxes and for costs of collection thereof, as will raise a sufficient amount to meet the levy of the legislative assembly for each fiscal year."

Section 148. Section 84-3806, R.C.M. 1947, is amended to read as follows:

"84-3806. **Failure of county commissioners to levy.** The action of the state *department of revenue* in fixing the rate of taxation for state purposes is, in the absence of action by the board of

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county commissioners, a valid levy of the rate so fixed, and imposes upon the county commissioners, and all other officers charged with the performance of any duties under the revenue law, the same obligations as if the board of county commissioners had made the levy at the proper time."

Section 149. Section 84-4003, R.C.M. 1947, is amended to read as follows:

"84-4003. **Statement to be transmitted to state auditor and state** *department of revenue.* The county clerk must, as soon as such statements are prepared, transmit by mail, one to the state auditor and one to the state *department of revenue.*"

Section 150. Section 84-4116, R.C.M. 1947, is amended to read as follows:

"84-4116. **Statement to be transmitted to the state** *department of revenue* **by the county clerk.** Within ten days after each settlement the county clerk must transmit by mail a statement to the state board of equalization, in such form as it may require, of each kind of property assessed and delinquent, and the total amount of delinquent taxes."

Section 151. Section 84-4502, R.C.M. 1947, is amended to read as follows:

"84-4502. **Payment of taxes under protest—action to recover.** (1) In all cases of levy of taxes, licenses or other demands for public revenue which are deemed unlawful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may before such tax or license becomes delinquent pay under written protest such tax or license, or any part thereof, deemed unlawful, to the officers designated and authorized to collect the same, specifying the grounds of protest; and thereupon the party so paying, or his legal representatives, may bring an action in any court of competent jurisdiction against the officers to whom said license or tax was paid, or against the county or municipality in whose behalf the same was collected, and the state *department of revenue,* which shall be served with summons and copy of the complaint, to recover such tax or license, or any portion thereof, paid under protest; provided, that any action instituted to recover any license or tax paid under protest shall be commenced and summons served within sixty (60) days after the date of payment of the same; provided further, that when any such license or tax is payable in installments the first installment, or so much thereof as may be deemed unlawful, may be so paid under written protest and suit commenced and summons served to recover the same within the time herein prescribed, and

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if any subsequent installment of such license or tax shall become due or payable before the final determination of the suit commenced to recover the first installment, or portion thereof, so paid under protest, then such subsequent installment, or portion thereof deemed unlawful, may also be paid under written protest, and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced to recover the first installment, or portion thereof, paid under protest, shall determine the right of the party paying such subsequent installment to have the same, or any part thereof refunded to him. All such licenses and taxes, when so paid under protest, shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund, and no part thereof shall be paid over to any officer, or placed in any other fund or used for any purpose whatever, but the whole thereof shall be retained in such protest fund until the final determination of any suit or action to recover the same.

(2) If no action is commenced within the time herein specified, or if such action be commenced and finally determined in favor of the county or municipality, or treasurer thereof, the amount of such license or tax shall be taken from such protest fund and deposited to the credit of the fund or funds to which the same property belongs, but if such action is finally determined adversely to such county or municipality, or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action, refund the amount of such license or tax, with costs of suit without interest, to the person in whose favor such judgment is rendered; provided, that if such action was commenced for the purpose of recovering the first installment, or any portion thereof, of any such license or tax, and any subsequent installment thereof, has been paid under protest, as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment also refund such portion of any subsequent installment as the person holding such judgment is entitled to recover, without interest."

Section 152. Section 84-4818, R.C.M. 1947, is amended to read as follows:

"84-4818. **Definitions.** The following words and phrases, when used in this act, shall have the following definitions:

(a) Freight line companies. Any person, or persons, joint-stock company, association, or corporation, wherever organized or incorporated, not being the owner, lessee, or operator of any railroad, engaged in the business of operating cars, or engaged in the business of furnishing or leasing cars, not otherwise listed

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for taxation in Montana, for the transportation of freight(whether said cars be owned by such company or any other person or company) over any railway line or lines, in whole or in part within this state, such line or lines not being owned, leased, or operated by such company, whether such cars be termed flat, coal, ore, tank, stock, gondola, furniture, or refrigerator cars, or by some other name.

(b) Board. The term *"department"* shall mean the state *department of revenue* of the state of Montana.

(c) Earnings. The terms "gross earnings" or "total gross earnings" are hereby declared to be and shall be construed to mean all earnings on business beginning and ending within this state, and a proportion, based upon the proportion of mileage within the state to the entire mileage over which such business is done, of all earnings on interestate business passing through, into, or out of this state."

Section 153. Section 84-4820, R.C.M. 1947, is amended to read as follows:

"84-4820. **Railroad companies to withhold tax, file statements annually and remit to state—receipts—investigations—ad valorem tax basis.** Every railroad company so using or leasing said cars, upon payment therefor to such company shall withhold from such payment five and one-half per cent (5½%) of as much thereof as shall constitute gross earnings of such freight line company within this state. On or before March 1, 1970, such railroad company shall make and file with the *department* a consolidated statement in a form to be prescribed by the *department of revenue,* showing the amount of such payments for the next preceding calendar year ending December 31, 1969, and the amounts so withheld and due the state of Montana. A like report shall be made on or before March 1 of each year thereafter; provided, however, that for good cause the *department* may grant a reasonable extension for filing, but not to exceed thirty (30) days. Such railroad company at the time of filing such statement shall remit the amounts so withheld and due the state of Montana. Upon receipt of such payment, the *department* shall issue its receipt, in triplicate, one (1) copy of which shall be mailed to such railroad company, one (1) to the freight line company for which such tax is paid, and one (1) to be retained in the office of the state *department of revenue.* The mailing of such receipt to such freight line company shall constitute notice of the filing of said statement and payment of said tax. If any railroad company shall fail to make or file such report, or if the state *department of revenue* be dissatisfied with any report filed, the *department of revenue* shall have the power to conduct a hearing and investigation for the purpose of ascertaining from whatever

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sources to which it has access, the gross earnings of such freight line company from the use or operation of such cars within the borders of this state, and in conducting such hearing and investigation, the *department of revenue* shall have power, by subpoena, to require officers, agents, employees or receivers of such railroad company, or of such freight line company, to attend before the state *department of revenue,* and to bring with him, or them, for inspection by the *department,* any books, papers, or documents in his or their possession, or under his or their control, in any manner affecting said tax, and to testify under oath concerning any matter relating to the organization or business of such freight line company within this state. Any person who shall fail, neglect or refuse to attend before the *department,* when subpoenaed so to do, or who shall fail, neglect, or refuse to bring with him and submit for inspection by the *department* any books, papers, or documents in his possession or under his control affecting the organization or business of such freight line company within this state, or who shall refuse to testify, or refuse to answer any question which may be asked him concerning the organization or business, shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months. Every freight line company, as hereinbefore defined, shall be liable for the payment of the difference, if any, between five and one-half per cent (5½%) of all gross earnings in this state and the amounts withheld and remitted to the state of Montana by railroads, and shall be liable for the payment of any additional taxes which the *department* may find due under its authority to raise or lower the rate to conform to the taxes which would be payable if the cars were taxed on an ad valorem basis."

Section 154. Section 84-4821, R.C.M. 1947, is amended to read as follows:

"84-4821. **Notice of incorrectness or insufficiency—procedure upon failure to file report.** Upon the filing of the reports herein provided for, the *department* shall compute and determine the amount of the tax, and on or before May 1st, notify such railroad company and freight line company if such report or payment of tax be incorrect or insufficient and such railroad company shall be liable for any additional tax found to be owing the state of Montana. If no report be filed as herein required, the *department* shall, on or before May 1st, ascertain from whatever sources to which it has access the gross earnings of such freight line company within this state from the use or operation of such cars by such railroad company; or if the gross earnings are not capable of being ascertained, the *department* may estimate the gross earnings of such freight line

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company within this state from such railroad company and the railroad company which failed to make the report or pay the tax shall be liable for the same together with penalties as hereinafter provided."

Section 155. Section 84-4823, R.C.M. 1947, is amended to read as follows:

"84-4823. **Penalty for nonpayment by railroad company.** If any such railroad company shall fail to pay such tax within the time specified in this act, a penalty of ten per cent (10%) of the amount of such tax shall be added thereto and charged against such railroad company by the *department of revenue.*"

Section 156. Section 84-4826, R.C.M. 1947, is amended to read as follows:

"84-4826. **Failure to file report—estoppel to impeach** *department of revenue's* **determination.** If any railroad company or freight line company affected by this act shall refuse or neglect to make any report required by this act, or shall refuse or neglect to permit an examination of its books, records, accounts and papers upon demand of the *department of revenue,* or shall refuse or neglect to appear before the *department* in obedience to its order or subpoena, or shall fail to object to the tax imposed by this act within the time and in the manner prescribed by this act, it shall be estopped to question or impeach the action or determination of the *department* as to the validy of the tax imposed hereunder."

Section 157. Section 84-4901, R.C.M. 1947, is amended to read as follows:

"84-4901. **Income tax—definitions.** For the purpose of this act unless otherwise required by the context:

(1) The word "*department*" means the state *department of revenue.*

(2) The word "taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this act, and does not include corporations.

(3) The term "taxable year" means the taxpayer's taxable year for federal income tax purposes.

(4) The word "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person whether individual or corporate, acting in any fiduciary capacity for any person, trust or estate.

(5) The word "paid" for the purposes of the deductions and credits under this act means paid or accrued or paid or incurred,

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and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this act. The term "received" for the purpose of computation of taxable income under this act, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this act.

(6) The word "resident" applies only to natural persons and includes for the purpose of determining liability to the tax imposed by this act with reference to the income of any taxable year, any person domiciled in the state of Montana, and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

(7) The word "dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(8) The words "foreign country" or "foreign government" mean any jurisdiction other than the one embraced within the United States, its territories and possessions.

(9) The words "information agents" include all individuals, corporations, associations and partnerships, in whatever capacity acting, including lessees, or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state, or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits and income with respect to which any person or fiduciary is taxable under this act.

(10) The term "net income" means the adjusted gross income of a taxpayer less the deductions allowed by this act.

(11) The term "taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this act."

Section 158. Section 84-4903.1, R.C.M. 1947, is amended to read as follows:

"84-4903.1. **Collection of tax from nonresidents—withholding authorized.** In order to insure collection, in the manner and to the extent provided by section 84-4907, of the income tax imposed

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upon the income of nonresidents by section 84-4903, withholding of portions of certain payments to nonresidents and payment of the amounts so withheld to the state *department of revenue* as partial payment of such nonresidents' income tax in the manner set forth in the following sections shall be, and hereby is, required."

Section 159. Section 84-4903.2, R.C.M. 1947, is amended to read as follows:

"84-4903.2. **Deducting and withholding from payments to nonresidents—transmittal to state** *department of revenue*—**additional reports and information—rules and regulations—order for withholding payments.** Every person, firm, corporation, association, partnership, or fiduciary doing business in or having income in the state of Montana, including the state of Montana, its agencies, and instrumentalities, counties, cities, towns, school districts, and municipal corporations of every kind, which knowingly makes payments of any kind to any nonresident of the state of Montana for services performed within the state of Montana other than those described in sections 84-4942 and 84-4943, or for casual sales of property, either real or personal, located within the state of Montana, or any prizes or winnings payable from or within the state of Montana, or hiring or having a contract with any nonresident of a temporary nature to be carried out within the state of Montana, shall deduct from such payment or payments an amount to be set by the state *department of revenue,* not to exceed three per cent (3%) of such payment, which shall be transmitted by him to the state *department of revenue* as partial payment of such nonresident's income tax.

Upon finding that reports and information, in addition to that now required by law or regulation, should be filed in order to insure the collection of Montana state income tax on payment to nonresidents for leases, rentals or royalties derived from property located within the state of Montana, the *department of revenue* may adopt rules and regulations requiring the filing of such reports and information.

If upon notice to a nonresident taxpayer and hearing the *department* finds that withholding should be made on payments to the taxpayer for leases, rentals or royalties derived from property located within the state of Montana in order to insure the collection of Montana state income tax, it may order withholding on such payments in an amount equal to the tax liability of the nonresident taxpayer. Such order shall be binding upon all withholding agents as hereinafter described who shall receive a copy thereof, by mail or otherwise, until such agent shall receive a copy of an order of the *department* terminating such withholdings as to the nonresident taxpayer."

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Section 160. Section 84-4903.5, R.C.M. 1947, is amended to read as follows:

"84-4903.5. **Monthly payment by withholding agent—exception.**. Withholding agents required to deduct and withhold tax payments under the provisions of section 84-4903.2 shall remit such payments monthly to the state *department of revenue* for each monthly period on or before the fifteenth day of the month following the close of such monthly period, except that payments for the month of December shall be made on or before the following January 31, payments for the month of March shall be made on or before the following April 30, payments for the month of June shall be made on or before the following July 31, and payments for the month of September shall be made on or before the following October 31.

Provided, however, that when the aggregate total amount of the tax withheld under the provisions of section 84-4903.2 shall amount to less than fifty dollars ($50) in each quarterly period of any year, such withholding agent shall not be required to file the monthly returns or to make the monthly payments last hereinabove provided for, but in lieu thereof such withholding agent shall, on or before February fifteenth of the year next succeeding that in which such payments were withheld, file an annual return in such form as shall be determined by the *department,* and shall pay therewith the amount required by this act to be deducted and withheld by such withholding agent from all payments paid during the preceding calendar year."

Section 161. Section 84-4903.6, R.C.M. 1947, is amended to read as follows:

"84-4903.6. **Modification of withholding provisions.** The conditions set forth in section 84-4903.2 may be modified by the state *department of revenue* provided:

(a) The withholding agent shall insure the *department* by bond or deposit of securities subject to approval by the state treasurer, or cash which shall not bear interest, that he will comply with the withholding requirements in so far as his obligation as a withholding agent is concerned, or

(b) The nonresident taxpayer shall furnish to the state *department of revenue* under such rules and regulations as it may prescribe an affidavit as to the correct amount of taxable income subject to the provisions of this act, in which case the state *department of revenue* shall determine the amount to be withheld."

Section 162. Section 84-4903.7, R.C.M. 1947, is amended to read as follows:

"84-4903.7. **Failure to withhold or pay—penalties.** If any

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withholding agent knowingly fails to withhold or pay to the state *department of revenue* any sums required by this act, or any order made pursuant to this act, to be withheld and paid, the same additions to the amount of such tax shall be imposed and added as those specified in section 84-4924 with respect to failure to make a return of income or to pay any income tax; and any individual corporation or partnership, or any officer or employee thereof, who, with intent to evade any tax or any requirement of this act, or who, with like intent, files or supplies any false or fraudulent statement or information, shall be liable to the same penalties as those imposed by section 84-4924 with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes."

Section 163. Section 84-4903.8, R.C.M. 1947, is amended to read as follows:

"84-4903.8. *Department* **may require withholding agent to make return and pay tax at any time.** If the state *department of revenue* in any case has reason to believe that the collection of the tax provided for in this section is in jeopardy, it may require the withholding agent to make such return and pay such tax at any time."

Section 164. Section 84-4903.9, R.C.M. 1947, is amended to read as follows:

"84-4903.9. **Amounts withheld as lien against agent—priority.** In addition to the penalties above—provided, if any withholding agent shall withhold any sums required to be withheld and paid over to the state *department of revenue* under this act, the amount of the sums so withheld shall constitute a first lien against all property, real and personal, tangible and intangible, of the withholding agent, which lien shall take precedence over all others, it being the intention of this act that the funds withheld by the withholding agent shall be considered funds held in trust by the withholding agent."

Section 165. Section 84-4903.10, R.C.M. 1947, is amended to read as follows:

"84-4903.10. **Rights of nonresident.** No nonresident taxpayer shall have any right of action against a withholding agent on account of any moneys withheld and paid over to the state *department of revenue* under this act, but nothing in this section shall be construed as removing any legal rights or remedies of such nonresident taxpayer for return of any tax erroneously or illegally collected or for any refund that may be due him.

For the purposes of any contract, leases or other obligations, any sum withheld pursuant to this act shall be deemed to have been paid to the nonresident at the time of such withholding."

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Section 166. Section 84-4903.12, R.C.M. 1947, is amended to read as follows:

"84-4903.12. **List of loans made to nonresidents upon grain for which chattel mortgage filed—duty of clerk to prepare.** It shall be the duty of the county clerk and recorder of every county in this state to prepare monthly a list showing such information as may be prescribed by the state *department of revenue* with respect to each loan made to a nonresident upon grain for which a chattel mortgage has been filed in his office and such list shall be mailed to the state *department of revenue* not later than the tenth day of the month following."

Section 167. Section 84-4903.13, R.C.M. 1947, is amended to read as follows:

"84-4903.13. **Rules and regulations.** The state *department of revenue* is hereby empowered to make all necessary rules and regulations for carrying out and enforcing this act."

Section 168. Section 84-4907, R.C.M. 1947, is amended to read as follows:

"84-4907. **Nonresident taxpayers.** In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state, but shall not include income from annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends on stock of corporations; except to the extent to which the same shall be a part of income from any business, trade, profession or occupation carried on in this state. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules and regulations prescribed by the state *department of revenue.*

In the case of a taxpayer other than a resident of this state, the deductions allowed in computing net income shall be restricted to those directly connected with the production of Montana income. A temporary resident shall be allowed those deductions allowed a resident to the extent that such deductions were actually incurred or expended in the state of Montana during the course of his residency."

Section 169. Section 84-4907.1, R.C.M. 1947, is amended to read as follows:

"84-4907.1. **Veterans' bonus—exemption from income tax law.** All payments made under the World War I Bonus Law, Korean Bonus Law and the Veterans' Bonus Law, are hereby exempt from taxation under the income tax laws of the state of Montana, and

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any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department, in the same manner as other income tax refund claims are paid."

Section 170. Section 84-4913, R.C.M. 1947, is amended to read as follows:

"84-4913. **Information agents' duties.** Every information agent shall make return to the *department* of complete information concerning the following distributions made for any individual during the taxable year, upon which no withholding tax has been deducted:

(1) Sums in excess of ten dollars ($10) distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code of 1965 or as that section may be amended, and payments made under a retirement plan covering an owner-employee as defined in section 401 (c) (3) of the Internal Revenue Code of 1965 or as that section may be amended;

(2) Interest, other than that specified in subsection (1) of this section, rents, royalties, salaries, wages, prizes, awards, annuities, pensions and other fixed or determinable gains, profits and income in excess of six hundred dollars ($600), except interest coupons payable to the bearer.

The return should be made under the regulations and in the form and manner prescribed by the *department*, provided, however, that for ease of reporting, the form shall be as nearly indentical to the comparable federal form as possible."

Section 171. Section 84-4914, R.C.M. 1947, is amended to read as follows:

"84-4914. **Returns and payment of tax—penalty and interest —refunds—credits.** (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of six hundred dollars ($600) or over, and married individuals not filing separate returns and having a combined gross income for the taxable year of twelve hundred dollars ($1,200) or over, shall be liable for the return to be filed on such forms and according to such rules and regulations as the *department of revenue* may prescribe.

(2) In accordance with instructions set forth by the *department,* every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made,

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the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired, unless the *department* so consents.

(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including, but not limited to those subject to the provisions of sections 84-4939 and 84-4943, as amended, shall compute the amount of income tax payable and shall at the time of filing the return required by this act, pay to the *department* any balance of income tax remaining unpaid after crediting the amount withheld as provided by section 84-4943, as amended, and/or any payment made by reason of an estimated tax return provided for in section 84-4939, as amended, provided however, the tax so computed is greater by one dollar ($1) than the amount withheld and/or paid by estimated return as provided in this act.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than one dollar ($1) the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the *department* shall examine and verify the tax.

(6) If the amount of the tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the *department* within thirty (30) days after notice of the amount of the tax as computed with interest added at the rate of nine per centum (9%) per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within thirty (30) days after the first notice of the amount is mailed to the taxpayer.

If payment is not made within thirty (30) days or if the understatement is due to negligence on the part of the taxpayer, but without fraud, there shall be added to the amount of the deficiency five per centum (5%) thereof, provided, however, that no deficiency penalty shall be less than two dollars ($2). Interest will be computed at the rate of nine per centum (9%) per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subdivision, the interest shall in all cases be computed from the date the return and tax was originally due (as distinguished from the due date as it may have been extended) to the date of payment.

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If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of nine per centum (9%) per annum from the time when the return was originally required to be filed to the time of payment."

Section 172. Section 84-4919, R.C.M. 1947, is amended to read as follows:

"84-4919. **Time for filing—affidavit—forms.** Returns shall be made to the *department* on or before the fifteenth day of the fourth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of April in each year. The *department* may grant a reasonable extension of time for filing returns whenever in its judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of persons who are abroad, no such extension shall be granted for more than six (6) months. Such returns shall set forth such facts as the *department* may deem necessary for the proper enforcement of this act. There shall be annexed to such return the affidavit or affirmation of the persons making the return, to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the *department* upon application, but failure to secure the form shall not relieve any taxpayer from the obligation of making any return herein required; provided, that every taxpayer liable for a tax under this law shall pay a minimum tax of one dollar ($1.00)."

Section 173. Section 84-4920, R.C.M. 1947, is amended to read as follows:

"84-4920. **Revision of return—time for determining tax—examination of records and persons.** If, in the opinion of the *department of revenue,* any return of a taxpayer is in any essential respect incorrect, it may revise such return, or if any taxpayer fails to make return as herein required, the *department* is authorized to make an estimate of the taxable income of such taxpayer from any information in its possession, and to audit and state an account according to such return or the estimate so made by it for the taxes, penalties and interest due the state from such taxpayer. Except in the case of willfully false or fraudulent return with intent to evade the tax, the amount of tax due under any return shall be determined by the *department* within five (5) years after the return was made, and the *department* thereafter shall be barred from revising any such returns or recomputing the tax due thereon and no proceeding in court for the collection of such tax shall be instituted after the expiration of said period notwithstanding the provisions of section 84-4929. In the case of a willfully false or

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fraudulent return, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due, and where no return has been filed, the tax may be assessed at any time.

The *department,* for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined, by any agent or representative designated, by it for that purpose, any books, papers or records of memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any person having knowledge in the premises, and may take testimony and require proof material for its information, with power to administer oaths to such person or persons."

Section 174. Section 84-4922, R.C.M. 1947, is amended to read as follows:

"84-4922. **Revision—application—hearing—adjustment.** If an application for revision be filed with the *department* by a taxpayer within five (5) years from the original due date of the return the *department* shall grant a hearing thereon, and if it is made to appear upon any such hearing by evidence submitted to it or otherwise, that any such computation includes taxes or other charges which could not have been lawfully demanded, or that payment has been illegally made or exacted of any such amount so computed, the *department* shall resettle the same according to law and the facts, and adjust the computation of taxes accordingly, and shall send notice of its determination thereon to the taxpayer."

Section 175. Section 84-4924, R.C.M. 1947, is amended to read as follows:

"84-4924. **Penalties for violations of act.** (1) If any person, without intent to evade any tax imposed by this act, fails to make a return of income at the time required by or under the provisions of this act, there shall be imposed a minimum penalty of ten dollars ($10) for such failure, or, if a tax in excess of two hundred dollars ($200) is due, a penalty in an amount equal to five (5) per centum thereof, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any person, without intent to evade any tax imposed by this act, fails to pay any tax if one is due at the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to ten (10) per centum thereof, but not less than ten dollars ($10), unless it is shown that the failure was due to reasonable cause and not due to neglect. Interest at the rate of nine per centum (9%)

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per annum shall be added to the tax for the entire period it remains unpaid.

(2) If any person fails with intent to evade any tax imposed by this act, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this act there shall be added to the tax an additional amount equal to twenty-five per centum (25%) thereof, but such additional amount shall in no case be less than twenty-five dollars ($25), and interest at one (1) per centum for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation or partnership, or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any tax or any requirement of this act or any lawful requirement of the *department* thereunder, fails to pay the tax, or to make, render, sign or verify any return, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars ($1,000.00), to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars ($1,000.00) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

(4) The certificate of the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied."

Section 176. Section 84-4928, R.C.M. 1947, is amended to read as follows:

"84-4928. **Levy upon and sale of property for payment of income taxes.** If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the *department* shall issue a warrant under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the *department* and pay to it the money collected by virtue thereof by a

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time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the *department* a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the *department* shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax."

Section 177. Section 84-4928.1, R.C.M. 1947, is amended to read as follows:

"84-4928.1. **Jeopardy assessments.** If the state *department of revenue* finds that the assessment or collection of the tax or a deficiency for any taxable year will be jeopardized in whole or in part by delay, it may mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the state *department of revenue* may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated.

A jeopardy assessment is immediately due and payable and proceedings for collection may be commenced at once."

Section 178. Section 84-4929, R.C.M. 1947, is amended to read as follows:

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"84-4929. **Action by attorney general.** Action may be brought at any time by the attorney general of the state at the instance of the *department,* in the name of the state to recover the amount of any taxes, penalties and interest due under this act."

Section 179. Section 84-4930, R.C.M. 1947, is amended to read as follows:

"84-4930. *Department* **authorized to make rules and regulations.** The *department* is hereby authorized to make such rules and regulations and to require such facts and information to be reported as it may deem necessary to enforce the provisions of this act."

Section 180. Section 84-4931, R.C.M. 1947 is amended to read as follows:

"84-4931. **Divulging information unlawful — exceptions — penalty.** (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the *department* or any deputy, assistant, agent, clerk or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act, or any other information secured in the administration of this act. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding under the provisions of this act, or any other taxing act, to which the *department* is a party, or on behalf of any party to any action or proceedings under the provisions of this act or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events, the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceedings and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general, or other legal representatives of the state, of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted in accordance with the provisions of section 84-4928 and section 84-4929. Reports and returns shall be preserved for three (3) years and thereafter until the *department* orders them to be destroyed.

(2) Any offense against subdivision one (1) of this section shall be punished by a fine not exceeding one thousand dollars

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($1,000.00), or by imprisonment in the county jail not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of one (1) year, thereafter.

(3) Notwithstanding the provisions of this section, the *department* may permit the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax upon the incomes of individuals, or the authorized representatives of either such officer, to inspect the returns of income of any individuals, or may furnish to such officer or his authorized representatives an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted or such information furnished to such officer or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

(4) Further, notwithstanding any of the provisions of this section, the *department* shall furnish to the Montana highway patrol board all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to section 84-4910 (d), for the purpose of enabling said highway patrol board to administer the provisions of section 31-127, R.C.M. 1947."

Section 181. Section 84-4937, R.C.M. 1947, is amended to read as follows:

"84-4937. **Credit allowed resident taxpayers for income taxes imposed by foreign states.** Subject to the following conditions, residents of this state shall be allowed a credit against the taxes imposed by this act for income taxes imposed by and paid to another state or country on income taxable under this act.

(1) The credit shall be allowed only for taxes paid to such other state on income derived from sources within such state which is taxable under the laws of such state or country irrespective of the residence or domicile of the recipient;

(2) The credit shall not be allowed if such other state or country allows residents of this state a credit against the taxes imposed by such state for taxes paid or payable under this act;

(3) The allowable credit shall be computed by formula to be prescribed by the *department*."

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Section 182. Section 84-4938, R.C.M. 1947, is amended to read as follows:

"84-4938. **Furnishing copy of federal return, copies of federal corrections, and filing amended return required.** Every taxpayer shall upon request of the *department,* furnish a copy of the return for the corresponding year which he has filed or may file with the federal government showing his net income and how obtained and the several sources from which derived. If the amount of a taxpayer's taxable income is changed or corrected by the United States Internal Revenue Service or other competent authority, the taxpayer shall report such change or correction to the *department* within ninety days after receiving notice thereof. If a taxpayer files an amended federal income tax return changing or correcting his federal taxable income for any taxable year, he shall also file an amended return with the state *department of revenue* within ninety days thereafter. The *department* shall supply all necessary forms and shall return all such forms to the taxpayer after they have been examined by the *department,* upon the request of the taxpayer."

Section 183. Section 84-4939, R.C.M. 1947, is amended to read as follows:

"84-4939. **Declaration of estimated tax.** (1) Every individual, except farmers, ranchers or stockmen, shall, at the time prescribed in subsection (3) of this section, make a declaration of his estimated tax for the taxable year, if his net income from sources other than wages, salaries, bonus, or other emolument can reasonably be expected to equal or exceed his net income from wages, salaries, bonus or other emolument, which wages, salaries, bonus or other emolument are subject to withholding.

(2) In the declaration required under subsection (1) of this section the individual shall state:

(a) The amount which he estimates as the amount of tax under section 84-4902 for the taxable year;

(b) The amount which he estimates will be withheld from wages paid by his employer if said individual is an employee.

(c) The excess of the amount estimated under subparagraph (a) over the amount estimated under subparagraph (b) which excess for purposes of this section shall be considered the estimated tax for the taxable year.

(d) Such other information as may be prescribed in rules and regulations promulgated by the *department.*

(3) The declaration required under subsection (1) of this sec-

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tion shall be filed with the *department* on or before April fifteenth of the taxable year except that if the requirements of subsection (1) of this section are first met:

(a) After April first and before October first of the taxable year the declaration shall be filed on or before October fifteenth of the taxable year.

(b) After October first of the taxable year the declaration shall be filed on or before February fifteenth of the succeeding taxable year.

Provided that the declaration required to be filed during 1955 may be filed not later than October 15, 1955 if the requirements of subsection (1) of this section are fulfilled at any time prior to October 2, 1955.

(4) An individual may make amendments of a declaration filed during the taxable year under subsection (3) of this section under rules and regulations prescribed by the *department*.

(5) If on or before February fifteenth of the succeeding taxable year, the taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on their return as payable then under rules and regulations prescribed by the *department*.

(a) If the declaration is not required to be filed during the taxable year but is required to be filed on or before such February fifteenth, such return shall for the purposes of this section be considered as such declaration; and

(b) If the tax shown on the return is greater than the estimated tax shown in a declaration previously made or in the last amendments thereof such return shall for the purposes of this section be considered as the amendment of the declaration permitted by subsection (4) of this section to be filed on or before such February fifteenth.

(6) The *department* shall promulgate rules and regulations governing reasonable extensions of time for filing declarations and paying the estimated tax, except in the case of taxpayers who are abroad, and no such extension shall be for more than six (6) months.

(7) If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer."

Section 184. Section 84-4940, R.C.M. 1947, is amended to read as follows:

"84-4940. **Installment payments of estimated tax.** (1) Esti-

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mated tax provided for in section 84-4939 shall be paid as follows: [a] If the declaration is filed on or before April fifteenth of the taxable year the estimated tax shall be paid in two (2) equal installments. The first installment shall be paid at the time of filing of the declaration and the second or last installment shall be paid on October fifteenth of the taxable year:

(b) If the declaration is filed after April fifteenth and not after October fifteenth of the taxable year and is not required by subsection (3) of section 84-4939 to be filed on or before April fifteenth of the taxable year the estimated tax shall be paid at the time of filing of the declaration;

(c) If the declaration is filed after October fifteenth of the taxable year and is not required by subsection (3) of section 84-4939 to be filed on or before October fifteenth of the taxable year, the estimated tax shall be paid in full at the time of filing of the declaration.

(d) If the declaration is filed after the time prescribed in section 84-4939 including cases where extensions of time have been granted paragraphs (b) and (c) of this subsection shall not apply and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in subsection (3) of section 84-4939 and the remaining installments shall be paid at the times at which and in the amounts in which they would have been payable if the declaration had been so filed. Provided that payments required under this section for purposes of the taxable year 1955 shall be limited to fifty per cent (50%) of the total estimated tax for 1955.

(2) If any amendment of a declaration is filed after April fifteenth and before October fifteenth of the taxable year the remaining installment, if any, shall be ratably increased or decreased as the case may be; to reflect the respective increase or decrease in the estimated tax by reason of such amendment and if any amendment is made after October fifteenth of the taxable year any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(3) At the election of the individual any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(4) Payment of the estimated tax or any installment thereof shall be considered payment on account of the tax for the taxable year.

(5) The application of this section of this act to taxable years

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of less than twelve (12) months shall be as prescribed in the rules and regulations promulgated by the *department.*

(6) In the application of this section of this act to taxpayers reporting income on a fiscal year basis there shall be substituted for the dates specified therein the months corresponding thereto."

Section 185. Section 84-4942, R.C.M. 1947, is amended to read as follows:

"84-4942. **Definitions.** When used in this act:

(a) The word *"department"* means the state *department of revenue.*

(b) The term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) for active service as a member of the armed forces of the United States;

(2) for agricultural labor as defined in paragraph (c) following;

(3) for domestic service in a private home, a local college club, or local chapter of a college fraternity or sorority;

(4) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars ($50.00) or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if;

(A) on each of some twenty-four (24) days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business.

(B) such individual was regularly employed (as determined under subparagraph (a) [A] by such employer in the performance of such service during the preceding calendar quarter.

(5) for services by a citizen or resident of the United States for a foreign government or an international organization.

(6) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or

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by a member of a religious order in the exercise of duties required by such order.

(7) (A) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution or

(B) for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(8) for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; when such payments are in the form of lodgings or meals and such services are received by the employee at the request of and for the convenience of the employer;

(9) to or for an employee as a payment for or a contribution toward the cost of any group plan or program which benefits the employee, including, but not limited to, life insurance, hospitalization insurance for the employee or dependents, and employees' club activities.

(c) The term "agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(d) Payroll period—For purposes of this chapter, the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer.

(e) Employee—For purposes of this chapter, the term "employee" includes an officer, employee or elected public official of the United States, the state of Montana, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(f) Employer—The term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the

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person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" means the person having control of the payment of such wages."

Section 186. Section 84-4943, R.C.M. 1947, is amended to read as follows:

"84-4943. **Deduction and withholding of tax from wages — amount.** Every employer making payment of wages shall deduct and withhold upon such wages, a tax determined in accordance with the withholding tax tables which shall be prepared and issued by the *department.* Persons on active service as a member of the armed forces of the United States shall not be subject to the provisions of this section."

Section 187. Section 84-4946, R.C.M. 1947, is amended to read as follows:

"84-4946. **Quarterly payment by employer—exception.** On or before the last day of the months of April, July, October and January of each calendar year, beginning with the month of October, 1955, every employer subject to the provisions of sections 84-4943 and 84-4945 shall file a return in such form and containing such information as may be required by the *department,* and shall pay therewith the amount required by section 84-4943 to be deducted and withheld by said employer from wages paid during the preceding quarterly period of three (3) months, beginning with wages paid from and after July 1, 1955.

If the total amount of the tax witheld by an employer under the provisions of this act upon the wages of all employees of any employer is less than ten dollars ($10) in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in the preceding paragraph, but in lieu thereof such employer shall, on or before February fifteenth of the year succeeding that in which such wages were paid, file an annual return in such form as may be required by the *department,* and shall pay therewith the amount required to be deducted and withheld by the said employer from all wages paid during the preceding calendar year.

Provided, however, that if the *department* has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under section 84-4928.1 with respect to jeopardy assessments of income tax."

Section 188. Section 84-4948, R.C.M. 1947, is amended to read as follows:

"84-4948. **Annual withholding statement.** Every employer

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shall, prior to the fifteenth day of February in each year furnish to each employee a written statement showing the total wages paid by the employer to the employee during the preceding calendar year and showing the amount of the federal income tax deducted and withheld from such wages and the amount of the tax deducted and withheld therefrom under the provisions of this act. Said statement shall contain such additional information and shall be in such form as the *department* shall prescribe, and a duplicate thereof shall be filed by the employee with his state income tax return.''

Section 189. Section 84-4950, R.C.M. 1947, is amended to read as follows:

"84-4950. **Filing of annual statement by employer — duty.** Every employer shall, on or before the fifteenth day of February in each year file with the *department* a statement in such form and summarizing such information as the *department* shall require, including the total wages paid to each employee during the preceding calendar year or any part thereof, and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of this act. Said annual statement filed by an employer shall, with respect to the wage payments reported therein, constitute full compliance with the requirements of section 84-4913, relating to the duties of information agents, and no additional information return shall be required with respect to such wage payments.''

Section 190. Section 84-4951, R.C.M. 1947, is amended to read as follows:

"84-4951. **Amounts withheld, held in trust for state—warrants to collect.** Every employer who deducts and withholds any amounts under the provisions of this act shall hold the same in trust for the state of Montana, and if any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the *department* shall issue a warrant under its official seal which shall have the same force and effect and shall be enforced and carried into execution in the same manner as that specified in section 84-4928, with respect to warrants relating to unpaid income taxes.''

Section 191. Section 84-4955, R.C.M. 1947, is amended to read as follows:

"84-4955. **Rules and regulations—remedies for administration, enforcement and collection.** The *department* is hereby empowered to adopt rules and regulations for the carrying out of the pro-

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visions of this act and the enforcement thereof.All of the remedies available to the state of Montana for the administration, enforcement and collection of income taxes shall be available and shall apply to the tax required to be deducted and withheld under the provisions of this act."

Section 192. Section 84-4956, R.C.M. 1947, is amended to read as follows:

"84-4956. **Credits and refunds.** If the *department of revenue* discovers from the examination of a return, or upon claim duly filed by a taxpayer, or upon final judgment of a court, that the amount of income tax is in excess of the amount due, or that any penalty or interest was erronoeusly or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty or interest, then due from the taxpayer, and the balance of such excess shall be refunded to the taxpayer.

Effective with taxable years ending on or after December 31, 1959, no such credit or refund shall be allowed or made after five (5) years from the date prescribed by statute for filing the return, unless before the expiration of such period a claim therefor is filed by the taxpayer, or the *department of revenue* has determined the existence of the overpayment and has approved the refund or credit thereof. Within six (6) months after a claim for refund is filed the state *department of revenue* shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state *department of revenue* shall so notify the said taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the *department* disapproves a claim for refund, review of the determination of the *department* may be had as otherwise provided in this chapter.

Except as hereinafter provided for, effective with taxable years ending on or after December 31, 1962, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of the overpayment (whichever date is later) to the date the *department of revenue* approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment shall be deemed to be the date on which the return for the taxable year was due. No interest shall accrue on an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year; nor shall interest accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state *department of revenue* for the purpose of verifying the

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amount of the overpayment. No interest shall be allowed (a) if the overpayment is refunded within six (6) months from the date the return is due or the date the return is filed, whichever date is later; or (b) if the overpayment results from the carryback of a net operating loss; or (c) if the amount of interest is less than one dollar ($1.00). An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability, or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable."

Section 193. Section 84-4958, R.C.M. 1947, is amended to read as follows:

"84-4958. **Release of lien or partial discharge of property.** (1) The *department of revenue* shall issue a certificate of release of any lien imposed with respect to any tax due under this chapter, when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof, has been fully satisfied. The *department of revenue* may issue a certificate of release if it determines that the lien is unenforceable.

(2) The *department of revenue* may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under this chapter, if:

(a) It finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which have priority to such lien;

(b) There is paid to the state treasurer in part satisfaction of the liability secured by the lien, an amount which shall not be less than the value, as determined by the *department of revenue,* of the interest of the state of Montana in the part to be discharged; or

(c) The *department of revenue* determines at any time that the interest of the state of Montana in the part to be so discharged has no value."

Section 194. Section 84-5210, R.C.M. 1947, is amended to read as follows:

"84-5210. **State** *department of revenue* **to prescribe levy.** The state *department of revenue* is hereby empowered and it is made its duty, annually, to prescribe the levy to be made against livestock of all classes for the purpose above indicated, and the various boards herein named shall have the right to recommend to said state *department of revenue* the amount of such levy."

Section 195. Section 84-5402, R.C.M. 1947, is amended to read as follows:

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"84-5402. **Net proceeds tax—statement of yield, penalty, extension of time.** Every person, partnership, corporation, or association, engaged in mining, extracting or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or sources whatever, precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, or other valuable mineral, must on or before the thirty-first day of March of each year make out a statement of the gross yield of the above-named metals or minerals from each mine owned or worked by such person, corporation or association during the year preceding the first day of January of the year in which such statement is made, and the value thereof. Such statement shall be in the form prescribed by the state *department of revenue,* and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership, and must be delivered to the state *department of revenue* on or before the thirty-first day of March. Such statement shall show the following:

1. The name and address of the owner of lessee or operator of the mine, together with the names and addresses of any and all persons, corporations, or associations owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons, corporations or associations during the period covered by the statement.

2. The description and location of the mine.

3. The number of tons of ore, barrels of petroleum, cubic feet of natural gas or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement.

4. The amount and character of such ores, mineral products or deposits, and the yield of such ores, mineral products or deposits from such mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas or other commercially valuable constituents of said ores or mineral products or deposits measured by standard units of measurement, yielded to such person, corporation or association so engaged in mining, and to said royalty holders and each of them, if any, during the period covered by the statement.

5. The gross yield or value in dollars and cents.

6. Actual cost of extracting same from mine.

7. Actual cost of transporting to place of reduction or sale.

8. Actual cost of reduction or sale.

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9. Actual cost of marketing the product and conversion of same into money.

10. Cost of construction, repairs and betterments of mines, and cost of repairs and replacements of reduction works.

11. The assessed valuation of reduction works for the calendar year for which such return is made.

12. Actual cost of fire insurance and workmen's compensation insurance.

If any person shall fail, neglect or refuse to file the statement required by this section within the time required, or within any extended period of time allowed, the state *department of revenue* when transmitting the net proceeds valuations to the counties shall inform the county assessor of such failure, neglect or refusal and the county assessor in addition to the net proceeds tax, if any, shall assess a penalty of 2/3 of 1% of such tax for each calendar month or fraction thereof that the required statement is not filed, deducting therefrom any moneys collected by the state *department of revenue* required by this section. The state *department of revenue* shall assess a penalty of $25 for each calendar month or fraction thereof, not exceeding four months, that the required statement is not filed, to be collected by the state *department of revenue* and deposited to the credit of the general fund of the state of Montana.

The state *department of revenue* shall, upon a showing of reasonable cause, grant an extension of time for filing the statement required by this section. This penalty shall be in addition to penalties provided in section 84-5410."

Section 196. Section 84-5406, R.C.M. 1947, is amended to read as follows:

"84-5406. **Assessment of royalties.** Upon receipt of the list or schedule setting forth the names and addresses of any and all persons, corporations and associations owning or claiming royalty, and the amount or amounts paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the state *department of revenue* shall proceed to the assessment of all such royalties, and shall assess the same at the full cash value of the money or product yielded during such preceding calendar year, and the same shall be taxed on the same basis as net proceeds of mines are taxed as provided by section 84-301."

Section 197. Section 84-5407, R.C.M. 1947, is amended to read as follows:

"84-5407. **False or fraudulent reports, procedure in case of.** If any such report required by this chapter contains any willfully

false or fraudulent statements as to the gross amount received by any person, corporation or association so engaged in mining as aforesaid, for any mine's product, then the said state *department of revenue* shall compute the gross value of such mine's product, and such gross value shall be based upon the average quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery, as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York City, or some other standard publication, giving the market reports for the year covered by the statement; and, provided further, that if any such person, corporation, or association has sold or otherwise disposed of any of its mine's product at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state *department of revenue* shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery at the time such portion of the product was so sold or otherwise disposed of, as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York City, or some other standard publication giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state *department of revenue* shall fix the value of such pross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable."

Section 198. Section 84-5408, R.C.M. 1947, is amended to read as follows:

"84-5408. **Transmission of net proceeds to county assessor.** On or before the first day of July in each year the state *department of revenue* shall transmit to the county assessor of each county in which such mines and mining claims are situated, the valuation of the net proceeds of such mines and mining claims for the purpose of taxation, as the same have been determined and fixed by *the state department of revenue.* [The said valuation for the purpose of taxation shall be an amount equal to the average net proceeds from such mine for the five calendar years next preceding, or for as many years next preceding as the mine has produced gross yield, or for as many years next preceding as this act has been in effect, whichever is less. The average net proceeds for valuation shall be computed by dividing the total net proceeds for such period by the number of years for which such net proceeds were taken into account. In

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determining net proceeds of each individual year for averaging to determine valuation for purposes of taxation, the actual annual net proceeds as defined in section 84-5403, including losses, if any, from such mines and mining claims shall be taken for each year rather than the average valuation for such year. In no event shall there be valuation for the purpose of taxation for a year when there has been no gross yield from such mines and mining claims for the preceding average years and such years shall not be taken into account in computing the net proceeds for any year.] The county assessor shall immediately enter the same upon an assessment roll called "assessment roll of net proceeds of mines," alphabetically arranged, and in which shall be specified in separate columns and under the following heads:

1. The name and address of the owner or lessee of the mine.

2. The description and location of the mine.

3. The number of tons of ore or other mineral products or deposits extracted and treated or sold from the mine during the period covered by the statement.

4. The gross value of the ores, mineral products or deposits, in dollars and cents, extracted and treated, or sold during the year, to be determined as provided in the preceding section.

5. The net proceeds, in dollars and cents, of such mine or mining claims during the years, to be determined as provided in the preceding section.

The form of said assessment roll shall be prescribed by the state *department of revenue* in conformity with the provisions of this act."

Section 199. Section 84-5409, R.C.M. 1947, is amended to read as follows:

"84-5409. **Taxation and payment on royalty interests.** At the time of transmitting net proceeds assessments the state *department of revenue* shall also transmit the royalty lists or schedules to the county assessor of each county in which such mines and mining claims are located and thereupon the county assessor shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before the fifteenth day of September following, upon which date said taxes shall be due and payable. Assessments of royalty on production of metals, and minerals other than petroleum and natural gas, shall be entered by the county assessor in the personal property assessment book in the name of the recipient or owner of such royalty. The county treasurer shall proceed to give full notice thereof to

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such recipient or royalty owner, and to collect the taxes thereon in the same manner as taxes on net proceeds of mines."

Section 200. Section 84-5410, R.C.M. 1947, is amended to read as follows:

"84-5410. **Penalty for failure to make statement — estimate of net proceeds.** If any person, partnership, association, or corporation shall refuse or neglect to make and deliver, under oath, to the state *department of revenue* any statement required by this act, or to comply with any requirements of this act, the state *department of revenue* must cause such refusal to be noted upon the assessment roll opposite the name of such person, partnership, association, or corporation, and must make an estimate of the ores, mineral products, or deposit mined and treated or sold by such person, partnership, association, or corporation, and upon such estimate shall fix and determine the value of the net proceeds of said mine or mining claim, as hereinbefore set forth. In making an estimate of the value of the net proceeds under this section, the state *department of revenue* shall have the power to subpoena and examine, under oath, any person, members of a partnership or association, officers or agents of a corporation, and the employees of such person, partnership, association, or corporation, and every person who refuses or neglects to appear and testify, when required so to do by the state board of equalization as herein provided, for each and every refusal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or both such fine and imprisonment."

Section 201. Section 84-5412, R.C.M. 1947, is amended to read as follows:

"84-5412. **Examination of records by** *department of revenue.* The state *department of revenue* shall have the right and power, at any time, to examine the records of any person, partnership, association, or corporation specified in this act, as the same may pertain to the yield of ore or mineral products or deposit, in order to verify the statements made by such person, partnership, association, or corporation, and if, from such examination, or from other information, said state *department of revenue* find any statement, or any material part thereof, willfully false or fraudulent, said state *department of revenue* must assess in the same manner as provided for in section 84-5403."

Section 202. Section 84-5415, R.C.M. 1947, is amended to read as follows:

"84-5415. **Dissolved corporations to make returns on net proceeds of mines and pay tax accrued.** Every corporation which shall

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be dissolved or cease to do business in this state during any tax-paying year shall make all statements, reports and returns required by law to be made with reference to the net proceeds of mines, and pay the tax due for such period as it transacted business, on or before the date of such dissolution or cessation of business. The state *department of revenue* may grant a reasonable extension of time for filing a return upon good cause shown therefor."

Section 203. Section 84-5501, R.C.M. 1947, is amended to read as follows:

"84-5501. **Definitions.** The following definitions shall be applied to the terms used in this act:

(1) "Agreement" shall mean "contract," and shall include renewals and alterations of a contract.

(2) *"Department"* shall mean the state *department of revenue* of the state of Montana.

(3) "State" shall mean the state of Montana.

(4) "Services" shall mean such public and state functions as are performed for property in and persons residing within this state.

(5) "United States" shall mean the United States of America.

(6) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States, located within this state, and shall include persons inhabiting such project."

Section 204. Section 84-5502, R.C.M. 1947, is amended to read as follows:

"84-5502. State *department of revenue* may make requests for sums in lieu of taxes from United States, when. The *department of revenue* is hereby authorized and empowered to make requests of the United States, for and on behalf of this state, for payment of such sums in lieu of taxes as the United States may agree to pay, and to consummate agreements with the United States, in the name of this state, for the performance of services by the state for the benefit of projects, and for the payment by the United States to the state, in one or more installments, of such sums in lieu of taxes."

Section 205. Section 84-5606.2, R.C.M. 1947, is amended to read as follows:

"84-5606.2. **Definitions.** As used in this act the following definitions shall apply unless the context otherwise requires:

(a) The word *"department"* shall mean the state *department of revenue* of the state of Montana.

(b) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization or association however formed.

(c) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper, or any other substance or material except tobacco.

(d) The words "insignia" or "indicia" shall mean the impression or mark approved by the state *department of revenue,* under the provisions of this act.

(e) The words "full face value of insignia" shall mean the total amount of the tax levied under this act.

(f) The words "public warehouses" shall mean agents or representatives of manufacturers who receive cigarettes in carload lots for distribution to wholesaler and retailers in original cases.

(g) The word "wholesaler" shall mean and include any person resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from the manufaacturers thereof and stores, sells, or otherwise disposes of the same after they shall reach this state; and also any person who, within this state, manufactures or produces, directly or indirectly, cigarettes and sells or distributes the same within this state.

(h) The words "licensed wholesaler" shall mean a wholesaler duly licensed under the provisions of this act.

(i) The words "cigarette vendor" shall mean and include any person, company or corporation, doing business in the state, who purchases cigarettes through a wholesaler for ten (10) or more cigarette vending machines, which he operates for a profit in premises or locations other than his own. Such person, company or corporation shall be treated as a wholesaler. Any person, company, corporation or fraternal organization who operates less than ten (10) cigarette vending machines shall be treated as a retailer.

(j) The word "retailer" shall mean any person other than a wholesaler, who is engaged in the business of selling cigarettes at retail.

(k) The words "licensed retailer" shall mean any person other than a wholesaler, who is duly licensed under the provisions of this act.

(l) The words "sale" and "sell" shall mean and include any transfer of cigarettes by sale, as defined by section 87A-2-106, R.C.M. 1947, or by gift, barter or exchange."

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Section 206. Section 84-5606.3, R.C.M. 1947, is amended to read as follows:

"84-5606.3. **Wholesaler's and retailer's licenses — multiple places of business — application forms.** Every wholesaler or retailer shall obtain a license from the *department* before engaging in the business of wholesaler or retailer. A separate application and a separate license shall be required for each place of business owned, controlled or operated by such wholesaler or retailer within the state of Montana. Application forms shall require the type and general description of applicant organizations, names and home addresses of all known owners, state whether or not principals of such organization have been convicted of a felony and identify each such individual, and such other pertinent information as the board may require in regularly promulgated regulations."

Section 207. Section 84-5606.4, R.C.M. 1947, is amended to read as follows:

"84-5606.4. **Vending machines not places of business per se — reports.** Cigarette vending machines shall not be considered as places of business per se but a report of each and all machines shall be made on forms prescribed by the *department,* which shall state the name and address of the cigarette vendor, the assigned location of each machine with best machine identification available, type of business, and such other information as the board may require for proper administration of this act."

Section 208. Section 84-5606.6, R.C.M. 1947, is amended to read as follows:

"84-5606.6. **Disposition of license fees — appropriations — transfer to general fund — justification of expenses.** All license fees collected under the provisions of this act shall be deposited monthly with the state treasurer in the *department's* cigarette enforcement account in the earmarked revenue fund. There shall be appropriated to the *department,* from said cigarette enforcement account, such sum as may be necessary to comply with the provisions of this act for the fiscal biennium ending June 30, 1971. On or before June 30, 1971, the *department* shall pay to the state treasurer to the credit of the state general fund, all funds in excess of seven thousand five hundred dollars ($7,500) in said cigarette enforcement account, not needed for the administration of this act.

For the biennium beginning July 1, 1971, and each biennium thereafter, there shall be appropriated to the board a sum deemed justified and reasonable to operate the *department's* cigarette enforcement division, providing that after payment of all pending and known expenses, all sums so appropriated in excess of seven thou-

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sand five hundred dollars ($7,500) not needed for the administration of this act, shall be transferred to the state general fund to be available for general fund purposes. Such transfer shall be made within fifteen (15) days of the last day of the biennium.

All expenses charged against said cigarette enforcement account shall be justified by itemized claims coupled with standard accounting reports."

Section 209. Section 84-5606.8, R.C.M. 1947, is amended to read as follows:

"84-5606.8. **Revocation or suspension of license — hearing and appeal — duration — sale of cigarettes after revocation or suspension a misdemeanor — forfeiture.** The *department* may revoke or suspend the license of any wholesaler or retailer for failure to comply with any provision of this act or of the Unfair Cigarette Sales Act (sections 51-301 through 51-314, R.C.M. 1947), and with any lawful rule or regulation of the *department* made pursuant to said laws. Any person aggrieved by such revocation or suspension may apply to the *department* for a hearing which shall be open to the public, and may further appeal to the court, as hereinafter provided. When a license has been duly revoked, no license shall again issue to such licensee for a period of one (1) year thereafter. When a license has been duly suspended, the suspension may be for any period not to exceed one (1) year. Any person who shall sell cigarettes after his license has been revoked or suspended is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state."

Section 210. Section 84-5606.13, R.C.M. 1947, is amended to read as follows:

"84-5606.13. **Use of tax meter machine authorized — insignia to be approved — marking of imported packages of cigarettes required — supervision of machines — charge — report.** The *department of revenue* may authorize any wholesaler or retailer of cigarettes licensed under this act to use a tax meter machine with which to imprint an insignia upon each package of cigarettes imported, sold or delivered in this state. The insignia shall be one approved by the *department*. Each package of cigarettes imported into this state, delivered or sold therein shall be marked with the proper insignia of such tax-stamping meter and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any wholesaler or retailer licensed under this act. The *department* shall supervise and check the operation of such tax meter machines. The operator of such machine before using the same, shall take the meter thereof to the county treasurer, of the county in which the machine is operated, who is authorized to, and shall

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set said meter for the number of packages specified and required by the operator. Prior to setting said meter the county treasurer shall charge said operator the amount of money proper for said setting, less the expense defrayment of eight per cent (8%) provided for in section 11 [84-5606.12]. The county treasurer shall collect this amount in advance unless the board has allowed the purchaser credit as provided in section 14 [84-5606.15]. The county treasurer shall report to the *department* on forms prescribed by it, the name of the licensed wholesaler or licensed retailer and the number of packages for which said meter was set and shall forward to the *department* any amounts collected from said licensee."

Section 211. Section 84-5606.14, R.C.M. 1947, is amended to read as follows:

"84-5606.14. **Resale of insignia prohibited — unused meter settings.** No wholesaler or retailer shall resell to any other wholesaler or retailer any insignia purchased by him from the *department*. Any wholesaler or retailer who has on hand any meter settings at the time of discontinuing his business of selling cigarettes, may apply to the *department* and be paid the face value of said meter settings less the amount of the expense defrayment allowed by section 11 [84-5606.12]."

Section 212. Section 84-5606.15, R.C.M. 1947, is amended to read as follows:

"84-5606.15. **Payment for insignia or affixation within thirty days — bond — new licensees to pay cash.** The *department* shall permit a licensed wholesaler or licensed retailer to pay for the insignia purchased, or affixation of insignia, within thirty (30) days after the date of purchase and shall require such licensee to file with the *department* a bond issued by a surety company approved by the state department of insurance as to solvency and responsibility and authority to transact business in the state, for such amount as the *department* may fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any thirty (30) day period in the previous calendar year; provided, however, that any newly licensed wholesaler or licensed retailer shall pay on a cash basis for one (1) complete calendar year, after which the *department* may permit him thirty (30) days to pay for the purchase or affixation of insignia and shall require a bond as hereinabove provided."

Section 213. Section 84-5606.16, R.C.M. 1947, is amended to read as follows:

"84-5606.16. **Proceedings upon failure or refusal to pay tax — penalty.** If any person fails or refuses to pay the tax required by

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this act when due, the *department* shall proceed to determine the tax due from such information as the *department* can obtain and shall assess the tax so determined against such person and notify him of the amount thereof. After such notice such tax shall become due and payable, together with a penalty of five per cent (5%) of such tax, or five dollars ($5) per day for each day after the date of such notice, whichever is greater."

Section 214. Section 84-5606.17, R.C.M. 1947, is amended to read as follows:

"84-5606.17. **Tax meter users to keep certain records — examination of records.** All tax meter users shall keep for a period of one (1) year, all invoices of cigarettes purchased and imported by them, all receipts issued by them and insignia purchased, also, an accurate record of all sales of cigarettes by such tax meter users, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point and destination. Such tax meter users shall permit the *department,* its assistants, authorized agents or representatives to examine all taxable items of cigarettes, invoices, receipts, books, paper, memoranda and records, as may be necessary to determine whether the tax meter machine has been used as required, or the insignia required by this act had been purchased and used, or to determine the amount of such tax as may be due or unpaid."

Section 215. Section 84-5606.20, R.C.M. 1947, is amended to read as follows:

"84-5606.20. **Shipments or deliveries into or out of state to be reported by carrier — form and contents of report.** Every common carrier hauling, transporting or shipping into or out of the state of Montana, from or to any other state, any cigarettes shall report in writing such shipments or deliveries to the *department,* on forms furnished by the *department,* giving the date, the person to whom the same was consigned and delivered and the quantity as shown by the bill of lading, and such other information as the *department* may require."

Section 216. Section 84-5606.21, R.C.M. 1947, is amended to read as follows:

"84-5606.21. **Transportation of cigarettes without insignia a misdemeanor unless in interstate commerce — vehicle, cigarettes and equipment subject to seizure and forfeiture.** It shall be unlawful for any person to transport into, receive, carry or move from place to place within this state, except in the course of interstate commerce, any cigarettes which do not bear the insignia required by this act. Any person violating the provisions of this section is guilty

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of a misdemeanor and shall be punished as hereinafter provided, and any motor vehicle, airplane, conveyance, vehicle or other means of transportation, in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with such transportation, and found in such means of transportation, shall be subject to seizure by the *department*, its duly authorized agent, or any sheriff or deputy, or other peace officer, and shall be subject to forfeiture in the manner hereinafter provided."

Section 217. Section 84-5606.22, R.C.M. 1947, is amended to read as follows:

"84-5606.22. **Inventory of seized property — application for return of property.** Upon the seizure of any cigarettes, and within two (2) days thereafter, the person or officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and file a copy thereof with the *department*. The person from whom the seizure was made, or any other person claiming an interest in the property seized, may apply for its return as provided in sections 95-713 through 95-716, R.C.M. 1947."

Section 218. Section 84-5606.25, R.C.M. 1947, is amended to read as follows:

"84-5606.25. **Appeal to district court — notice of appeal — perfecting appeal within thirty days — bond — hearing date.** Any person aggrieved by any action or decision of the *department*, made under the provisions of this act, may appeal therefrom to the district court of the county where appellant resides, which appeal shall be taken by notice of appeal in writing, setting forth the actions or decisions of the *department*, of which the appellant is aggrieved. Such appeal shall be perfected within (30) days after notice of any action or decision of the *department*, and shall be taken by serving a notice of appeal upon the *department* and filing the same with the clerk of said court, together with a good and sufficient bond to the state of Montana. The condition of such bond shall be to the effect that appellant agrees to prosecute said appeal diligently, and if the court shall finally decide that the state is entitled to judgment, that appellant will pay the amount thereof together with costs of such appeal. The bond shall be in the form required by law and in such an amount as the court may require. The notice of appeal shall be signed by the appellant or his attorney, and the matter appealed shall be heard upon ten (10) days' notice given by either party, unless a different time is specified by the court. Said district court may grant such relief as the law and the facts in the premises require."

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Section 219. Section 84-5606.27, R.C.M. 1947, is amended to read as follows:

"84-5606.27. **Promulgation of rules and regulations.** The *department* shall have the power and authority to prescribe all rules and regulations not inconsistent with the provisions of this act, for the detailed and efficient administration thereof. All such rules, regulations and orders promulgated shall be published promptly and a copy distributed to each wholesale licensee; be published cumulative annually, and maintained in full as a public record."

Section 220. Section 84-5606.28, R.C.M. 1947, is amended to read as follows:

"84-5606.28. **County attorneys and peace officers to assist in enforcement of act — appointment of additional assistants and division authorized — presumption of violation.** In the enforcement of this act, the *department* may call to its assistance, and it shall be the duty of any county attorney, or any peace officer, in this state, to assist the *department* in the enforcement of this act; and the board is hereby authorized to appoint such additional assistants, and to establish an additional division of cigarette enforcement, as may be required to carry out the provisions of this act. Whenever any cigarettes are found in the place of business of any unlicensed wholesaler, retailer or other person, without the insignia affixed and canceled, or not marked as having been received by the unlicensed wholesaler, retailer or person within the preceding seventy-two (72) hours the presumption shall be that such cigarettes are kept therein in violation of the provisions of this chapter."

Section 221. Section 84-5606.29, R.C.M. 1947, is amended to read as follows:

"84-5606.29. *Department* **entitled to sue for unpaid tax and costs — treble damages.** In the case of any violation of this chapter, the *department* shall be entitled to sue, in the district where the *department* maintains its principal office for the amount of the unpaid tax and costs, including reasonable expense of the *department* in effecting collection of the unpaid tax. Where the court finds the failure to pay the tax has been willful, the court must, in addition, assess damages in treble the amount of the tax found to be due."

Section 222. Section 84-5606.30, R.C.M. 1947, is amended to read as follows:

"84-5606.30. **Employment of clerical and field assistants — disposition of taxes — war veterans' compensation fund abolished.** The *department* is hereby authorized to employ such clerical and field assistants as may be necessary to properly administer the provisions of this law. All moneys collected under the provisions of subdivision

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(2) of section 84-5606, less the expense of collecting all the taxes levied, imposed and assessed by said section 84-5606, shall be paid to the state treasurer and deposited as follows: fifty per cent (50%) in the general fund, fifteen percent (15%) in the long-range building program account in the sinking fund, and thirty-five per cent (35%) in the long-range building program account in the bond proceeds and insurance clearance fund. All taxes levied, imposed and assessed under the provisions of subdivision (3) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund and shall, while any of the bonds hereafter issued and sold for the purpose of paying an honorarium, or adjusted compensation, to the residents of Montana who were in military service in the military forces of the United States in World War I or World War II, or any of the interest thereon, remain unpaid, be available for the payment thereof.

All taxes levied, imposed and assessed under the provisions of subdivision (4) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund, which shall, while any of the bonds hereafter issued and sold, in addition to the bonds authorized by said Initiative Measure No. 54, as originally enacted, or any of the interest upon such additional bonds, remain unpaid, be used only for the payment thereof, and of the expenses of administration of this act.

The War Veterans' Compensation Fund established by Initiative No. 54, as amended by chapter 44, Laws of 1957, is abolished and all moneys in the fund are transferred to a subfund in the bond proceeds and insurance clearance fund. When all veterans' honoraria authorized by law have been paid, such moneys shall be transferred to the two (2) accounts in the sinking fund established by this section.

After all of the outstanding War Veterans' Compensation Bonds and World War I Compensation Bonds have been paid or redeemed, or after the necessary funds have been set aside for their payment or redemption, the balance of the proceeds theretofore collected under the provisions of subdivisions (3) and (4) of said section 84-5606 shall be transferred to the sinking fund account provided for in section 79-2203, R.C.M. 1947."

Section 223. Section 84-5606.31, R.C.M. 1947, is amended to read as follows:

"84-5606.31. **Violation of act a misdemeanor unless otherwise provided — penalties.** Unless hereinbefore expressly otherwise provided, the violation of any provision of this act shall constitute a misdemeanor, and any person violating any such provision shall be punished by a fine of not less than one hundred dollars ($100),

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or more than five hundred dollars ($500), or by imprisonment in the county jail for not less than thirty (30) days or more than six (6) months, or by both such fine and imprisonment; and if such person is the holder of a license issued under this act, such license shall be revoked by the *department* for a period of one (1) year."

Section 224. Section 84-5902, R.C.M. 1947, is amended to read as follows:

"84-5902. **Persons subject to tax.** Every person engaged in or carrying on the business of working or operating any mine or mining property in the state of Montana from which vermiculite, perlite, kerrite, maconite or any other micaceous minerals or hydrous silicates are mined, extracted or produced, must, for the year 1951 and each year thereafter, when engaged in or carrying on such business in this state, pay to the state *department of revenue,* for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, in an amount equal to five (5) cents per ton of two thousand (2,000) pounds for each and every ton of concentrates mined, extracted or produced by such person during such year."

Section 225. Section 84-5903, R.C.M. 1947, is amended to read as follows:

"84-5903. **Quarterly payment.** Such annual license tax as imposed by section 84-5902 shall be paid in quarterly installments for the quarters ending, respectively, March thirty-first, June thirtieth, September thirtieth and December thirty-first of each year, beginning with the quarter ending March 31, 1951, and the amount of such license tax due for each such quarter shall be paid to the state *department of revenue* within thirty (30) days after the end of each of such quarter."

Section 226. Section 84-5904, R.C.M. 1947, is amended to read as follows:

"84-5904. **Statement filed with state** *department of revenue.* Each and every person engaged in or carrying on the business specified in section 84-5902, must, at the date when this act becomes effective, but not later than thirty (30) days thereafter, and every person who shall, after the date this act becomes effective, engage in such business, must immediately upon engaging therein, file with the state *department of revenue* a certificate and statement on forms prescribed by the state *department of revenue,* which shall contain the name under which such person is engaging in and carrying on such business within this state, giving the name of the place or places of business or location of plants within this state; the name and address of the managing agent in this state if a corporation,

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joint-stock company or association; or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company or corporation, under the laws of what state organized, its principal officers; and such other information as the state *department of revenue* may deem necessary."

Section 227. Section 84-5905, R.C.M. 1947, is amended to read as follows:

"84-5905. **Records.** Every such person shall keep a record in such form as the state *department of revenue* may require of all such products mined or produced by him in this state. Such records shall at all times during the business hours of the day be subject to inspection by the state *department of revenue,* its agents or employees."

Section 228. Section 84-5906, R.C.M. 1947, is amended to read as follows:

"84-5906. **Quarterly statement — payment of tax.** Each and every person must, within thirty (30) days after the quarter ending March 31, 1951, and within thirty (30) days after the end of each following quarter, make out, on forms prescribed by the state *department of revenue,* and deliver to the state *department of revenue,* a statement showing the total number of tons of concentrates of vermiculite, perlite, kerrite, maconite or any other micaccous minerals or hydrous silicates mined or produced by such person, during each month of such quarter and during the whole quarter, and such other information as said board may require, together with the total amount due to the state as license taxes for such quarter; and must, within such thirty (30) days, and at the same time such statement is delivered to the state *department of revenue,* pay to the state *department of revenue* the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, corporation or joint-stock company making the same. Any such person engaged in carrying on such business at more than one place or operating more than one mine in this state, may include all thereof in one statement."

Section 229. Section 84-5907, R.C.M. 1947, is amended to read as follows:

"84-5907. **Failure to file statement — determination of tax — collection.** If any person shall fail, neglect or refuse to file any statement required by section 84-5906 within the time required, or shall fail to pay the tax required by this act on or before the date such

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payment is due, the state *department of revenue* shall, immediately after such time has expired, proceed to inform itself as best it may regarding the amount produced by such person within this state during such quarter, and during each month thereof, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement, showing the same, and shall add to the amount of such license taxes, a penalty of twenty-five per cent (25%) thereof and deliver such statement to the attorney general, who shall proceed to collect the amount of the license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent (12%) per annum from the date of the making of such statement by the state *department of revenue* until paid. Upon request of the state *department of revenue,* it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to recover the same."

Section 230. Section 84-6203, R.C.M. 1947, is amended to read as follows:

"84-6203. **Net proceeds — how computed.** The state *department of revenue* shall calculate and compute from said returns the gross product yielded from such mine, and its gross value in dollars and cents for the year covered by the statement, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person so engaged in mining, which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross products thereof the following, to wit:

1. All royalty paid or apportioned in cash or in kind by the person so engaged in mining.

2. All moneys expended for necessary labor, machinery and supplies needed and used in the mining operations and developments.

3. All moneys expended for improvements, repairs and betterments necessary in and about the working of the mine.

4. All moneys expended for fire insurance and workmen's compensation insurance, and for payments by operators to welfare and retirement funds when provided for in wage contracts between operators and employees.

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, shall be included in such expenditures, except as provided in section 84-6204; and such expenditures shall not include the salaries, or any portion

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thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof."

Section 231. Section 84-6204, R.C.M. 1947, is amended to read as follows:

"84-6204. **Deduction of drilling costs and capital expenditures.** The state *department of revenue* in computing the deductions allowable for cost of drilling wells completed during the period and for other capital expenditures shall allow ten per cent (10%) of such cost each year for a period of ten (10) years, provided, however, the operator or producer may elect to amortize the cost over a period of two (2) years if the well is less than three thousand (3,000) feet deep.

The *department* shall also compute and allow deductions for any capital expenditures made during the year 1953, where the same have not been previously allowed in computing such net proceeds under the laws of the state of Montana."

Section 232. Section 84-6205, R.C.M. 1947, is amended to read as follows:

"84-6205. **Assessment of royalties.** The amount of royalty received shall be considered net proceeds to the recipient and shall be assessed as follows: Upon receipt of the lists or schedules setting forth the names and addresses of any and all persons owning or claiming royalty, and the amount or amounts paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the state *department of revenue* shall proceed to the assessment of all such royalties, and shall assess the same at the full cash value of the money or product yielded or accrued during such preceding calendar year, and the same shall be taxed as net proceeds of mines."

Section 233. Section 84-6206, R.C.M. 1947, is amended to read as follows:

"84-6206. **False or fraudulent reports — procedure in case of.** If any such report required by this act contains any willfully false or fraudulent statement as to the gross amount received by any person so engaged in mining as aforesaid, for any mine's product, then the said state *department of revenue* shall compute the gross value of such mine's product, and such gross value shall be based upon the market value at the point of production. Should there be no quotation covering any particular product, then the state *department of revenue* shall fix the value of such gross product in such manner as may seem to be equitable."

Section 234. Section 84-6207, R.C.M. 1947, is amended to read as follows:

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"84-6207. **Transmission of net proceeds valuations to county assessor.** On or before the first day of July in each year the state *department of revenue* shall transmit to the county assessor of each county in which such mines are situated, the valuation of the net proceeds of such mines for the purpose of taxation, as the same have been determined and fixed by the state *department of revenue,* and the lists of royalties assessed under the provisions of section 84-6205. The county assessor shall enter the same upon an assessment roll called "Assessment Roll of Net Proceeds of Mines," the form of which shall be prescribed by the state *department of revenue* in conformity with the provisions of this act. The royalty assessments shall be entered by the county assessor under the name of the operator, and such assessments of royalty when entered shall have all the force and effect as if made in the names of the owners of such royalty individually as well as against the operator."

Section 235. Section 84-6208, R.C.M. 1947, is amended to read as follows:

"84-6208. **County assessors to compute taxes.** Immediately after the county board of *commissioners* has fixed tax levies on the second Monday in August, the county assessor shall compute the taxes on such net proceeds and royalty assessments, and shall deliver the book to the county treasurer on or before the fifteenth day of September. The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law.

The operator or producer shall be liable for the payment of said taxes and same shall be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that the operator may, at his option, withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon such royalty or royalty interest, after such withholding any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests."

Section 236. Section 84-6209, R.C.M. 1947, is amended to read as follows:

"84-6209. **Penalty for failure to make statement—estimate of net proceeds.** If any person shall refuse or neglect to make and deliver, under oath, to the state *department of revenue* any statement required by this act, or to comply with any requirements of this act, the state *department of revenue* must cause such refusal to be noted upon the assessment roll opposite the name of such per-

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son, and must make an estimate of the cubic feet of natural gas, barrels of petroleum or other crude or mineral oil mined and treated or sold by such person, and upon such estimate shall fix and determine the value of the net proceeds of said mine as hereinbefore set forth. In making an estimate of the value of the net proceeds under this section, the state *department of revenue* shall have the power to subpoena and examine under oath, any person, members of a partnersship or association, officers or agents of a corporation, and the employees of such person, partnership, association or corporation, and every person who refuses or neglects to appear and testify, when required so to do by the state *department of revenue* as herein provided, for each and every refusal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment."

Section 237. Section 84-6211, R.C.M. 1947, is amended to read as follows:

"84-6211. **Statement required on dissolution of corporation during taxpaying year.** Every person who shall cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by this act, and pay the tax due for such period as it transacted business, on or before the date of such cessation of business. The state *department of revenue* may grant a reasonable extension of time for filing a return upon good cause shown therefor."

Section 238. Section 84-6212, R.C.M. 1947, is amended to read as follows:

"84-6212. **Examination of records by** *department of revenue.* The state *department of revenue* shall have the right and power, at any time, to examine all books, records, papers and documents of such person pertaining to such business, in order to verify the statements made by such person, and if, from such examination, or from other information, said state *department of revenue* finds any statement, or any material part thereof, willfully false or fraudulent, said state *department of revenue* must assess in the same manner as provided for in section 84-6203."

Section 239. Section 84-6301, R.C.M. 1947, is amended to read as follows:

"84-6301. **Gallonage tax on gasoline in fuel tanks in excess of twenty gallons purchased outside state and used in state — exception—arrangement to buy equal amount of gas in state — monthly report.** Every importer who brings in to this state in

the fuel tanks of any motor vehicle more than twenty (20) gallons of gasoline, purchased outside the state and used to operate the vehicle upon the public highways and streets of the state, shall pay the state gallonage tax on all such gasoline in excess of twenty (20) gallons unless, under an arrangement approved by the state *department of revenue,* he shall purchase within the state gasoline equal to such excess. Within thirty (30) days after the close of each month, he shall file with the state *department of revenue* a report, on such forms and under such rules and regulations as the state *department of revenue* may prescribe, of all such gasoline imported by him so used within this state, and shall at the same time pay to the state *department of revenue* the amount of tax due for such month."

Section 240. Section 84-6306, R.C.M. 1947, is amended to read as follows:

"84-6306. **Penalty for failure, neglect, or refusal to make statement or pay tax—notification—additional penalty for failure to comply after notification.** If any importer fails, neglects, or refuses to make any statement required for any month, or to pay the license tax due for any month, within the time prescribed for the filing of such statement or the payment of such tax, there shall automatically accrue a penalty equal to one-tenth of one cent (.1¢) on each gallon of gasoline purchased during that month, the amount of such penalty shall in no case be less than five dollars ($5.00), or, if no purchases were made, a penalty of five dollars ($5.00), such penalty to be paid or collected in the manner hereinafter provided.

The state *department of revenue* shall notify any importer that fails, neglects or refuses to make any statement required for any month within the time prescribed for the filing of such statement or the payment of such tax, of such failure and if the required statement is not filed or payment of tax is not made within ten (10) days from the date of such notification, there shall automatically accrue a penalty equal to one cent (1¢) on each gallon of gasoline purchased during that month, the amount of which penalty shall in no case be less than twenty-five dollars ($25.00), or, if no purchases were made, a penalty of twenty-five dollars ($25.00), such penalty to be paid or collected in the manner hereinafter provided."

Section 241. Section 84-6307, R.C.M. 1947, is amended to read as follows:

"84-6307. **Failure or refusal to make and file return or false return — *department of revenue* to prepare statement.** If any importer fails or refuses to make and file a return at the time prescribed in this act, or make, willfully or otherwise, an erroneous,

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false, or fraudulent statement, the state *department of revenue,* or its duly appointed agent, shall make the statement from its or his own knowledge and from such information as it or he can obtain through testimony or otherwise. Any statement so made shall be prima facie good and sufficient for all legal purposes. As a further means of making the statement, the state *department of revenue* or its duly appointed agent, shall have the power to examine the books, records and papers of such importer, to ascertain the amount of tax due under the provisions of this act. From the statement so made, the state *department of revenue* shall determine the amount of tax due, if any, and shall add the penalty provided herein for failure to pay the tax or to file the return within the time prescribed for the payment of such tax or the filing of such return, and shall notify the importer, of the amount of tax and penalty assessed together with a demand for immediate payment of the tax and penalty. If such tax and penalty is not paid within thirty (30) days, the treasurer of the state of Montana shall proceed to collect such tax and penalty in the manner prescribed in section 84-1807."

Section 242. Section 84-6402, R.C.M. 1947, is amended to read as follows:

"84-6402. **Assessment of flight property.** The flight property of all scheduled airline companies operating in Montana under a certificate of convenience and necessity issued by the United States civil aeronautics board shall be assessed annually by the state *department of revenue.*"

Section 243. Section 84-6403, R.C.M. 1947, is amended to read as follows:

"84-6403. **Report by airline company.** Every airline company engaged in air commerce in this state shall annually, on or before the first day of May, file with the *department of revenue* in such form as the *department* may require, a report under oath, showing the following:

(1) The name of the person or persons, association, joint-stock company or corporation;

(2) Under the laws of what state organized or existing;

(3) The location of its principal office;

(4) The location of its principal office in this state, if any;

(5) The number of aircraft of each type or kind, the total original cost, the average cost per plane, the total depreciated cost, and the average depreciated cost per plane at the end of the preceding calendar year;

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(6) The number of shares of capital stock authorized, number of shares outstanding, the total par value and the total market value at the end of the preceding calendar year; the par value of outstanding bonds and long term debt, and the market value at the end of the preceding calendar year;

(7) Income account showing operating revenues and expenses of the entire system and net operating income during the preceding calendar year;

(8) The total tonnage of passengers, express and freight first received by the airline company in this state during the preceding calendar year plus the total tonnage of passengers, express and freight finally discharged by it within this state during the preceding calendar year, and the total of such tonnage first received by the airline company or finally discharged by it, within and without this state during the preceding calendar year;

(9) The total time in equated plane hours, of all aircraft of the scheduled airline company in flight in this state during the preceding calendar year, plus the total time of such aircraft on the ground in this state during the preceding calendar year and the total of such time in flight or on the ground within and without this state during the preceding calendar year;

(10) The number of revenue ton miles of passengers, mail, express and freight flown by the scheduled airline company within this state during the preceding calendar year and the total number of such miles flown by it within and without this state during the preceding calendar year;

(11) The number of arrivals and departures of all aircraft of the scheduled airline company in this state during the preceding calendar year and the total number of such arrivals and departures within and without this state during the preceding calendar year;

(12) Such other information as the *department of revenue* may require."

Section 244. Section 84-6404, R.C.M. 1947, is amended to read as follows:

"84-6404. **Determination of value.** The *department of revenue* shall determine the full and true valuation of all flight property of all airlines operating in this state or used by every scheduled airline company in air commerce. This valuation may be ascertained by:

(1) Determining the full and true valuation of all flight property, owned and operated by every scheduled airline company, as an integrated operation; and,

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(2) Allocating to the state of Montana, from this total valuation, a valuation which represents this state's proper share of the valuation of the flight property, through the application of ratios, which are indicated in section 84-6403, subsections (8), (9), (10) and (11), against the total valuation.

(3) After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made.''

Section 245. Section 84-6405, R.C.M. 1947, is amended to read as follows:

"84-6405. **Hearing before** *the state tax appeal board.* After such assessment *is made* the *state tax appeal board* shall give at least ten (10) days' written notice thereof to the person or persons to whom the assessment is made, together with time and place of hearing thereon, at which time and place such person or persons, or any taxpayer may *appear* before the *board* in person, or otherwise, to show cause why such assessment should be either lowered or raised.''

Section 246. Section 84-6406, R.C.M. 1947, is amended to read as follows:

"84-6406. **Procedure on failure to file statement.** If any airline company shall refuse or neglect to make the statement required by this act to the *department of revenue,* or shall refuse or neglect to permit an inspection and examination of its property, its records, books, accounts, or other papers when requested by the *department* or shall refuse or neglect to appear before the *department* when required so to do, the *department* shall assess the property of such airline company according to its best judgment on available information, and may add to the assessment a penalty not exceeding ten per cent (10%) of the assessment, and such airline company shall be estopped to question or impeach the action or determination of the board thereon.''

Section 247. Section 84-6407, R.C.M. 1947, is amended to read as follows:

"84-6407. **Transmission of statement of amount apportioned to counties.** On or before the second Monday in July, the *department* shall apportion such assessment to the counties in or through which the airline operates. The county assessor must enter the amount of the assessment apportioned to the county in the column of the assessment roll or book which shows the total value of all property for taxation in the county. The assessment shall be assigned to class 7 having a taxable value of forty per cent (40%) of assessed value."

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Section 248. Section 84-6408, R.C.M. 1947, is amended to read as follows:

"84-6408. **Record of assessment and apportionment of properties.** The state *department of revenue* must keep a record of all such assessments and apportionments."

Section 249. Section 84-6410, R.C.M. 1947, is amended to read as follows:

"84-6410. **Extension of time for making report.** The *department of revenue* for good cause may extend for not to exceed thirty (30) days the time for making a report as required under section 84-6403."

Section 250. Section 84-6606, R.C.M. 1947, is amended to read as follows:

"84-6606. **Verified declaration of destination on out-of-state mobile homes—delivery and affixing to vehicle—obtaining tax receipt—exemptions.** (1) whoever brings a mobile home into the state of Montana shall immediately upon arrival in the state execute a written declaration verified under oath stating the destination of the mobile home and such other information as the state *department of revenue* shall require and shall deliver the original of the declaration to whoever is on duty at the nearest port of entry station, state vehicle weight station or such other places and persons as the state *department of revenue* may prescribe. He shall also immediately upon arrival in the state of Montana affix a copy of the declaration to the mobile home at a conspicuous place.

(2) Whoever moves a mobile home from a point within the state of Montana to another point within or without the state of Montana shall first:

(a) Execute the declaration provided for in subsection (1) of this section, deliver the original of it to the treasurer of the county in which the move originates or to such other person as the state *department of revenue* shall prescribe and affix a copy of it to the mobile home to be moved at a conspicuous place;

(b) Obtain from the county treasurer of the county in which the move originates a receipt showing payment in full of property taxes due with respect to that mobile home to the date it is moved.

(3) The provisions of subsection (2) (b) of this section shall not apply whenever a person moves a mobile home:

(a) From a point without to a point within the state of Montana.

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(b) Between places of business of dealers within or without the state of Montana.

(c) From the place of business of a dealer to a point within or without the state of Montana."

Section 251. Section 84-6607, R.C.M. 1947, is amended to read as follows:

"84-6607. **State** *department of revenue* **to make regulations.** The state *department of revenue* may make reasonable rules and regulations necessary for or as an aid to effectuation of the purposes of this act."

Section 252. Section 84-6801, R.C.M. 1947, is amended to read as follows:

"84-6801. **Definitions.** As used in this act, the following definitions shall apply unless the context otherwise requires:

(1) The word *"department"* shall mean the state *department of revenue* of the state of Montana.

(2) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization or association, however formed.

(3) The word "cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(4) The words "sale" or "sell" shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatever of tobacco products, other than cigarettes.

(5) The word "wholesaler" shall mean any person who purchases tobacco products, other than cigarettes, directly from the manufacturer, or who purchases tobacco products, other than cigarettes, from any other person who purchases from the manufacturer, and who acquires such products for the purpose of bona fide sales to retail dealers, or who services retail outlets by the maintenance of an established place of business for the purchase of tobacco products, other than cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of tobacco products. The word "retailer" shall mean any person other than a wholesaler who is engaged in the business of selling tobacco products to the ultimate consumer.

(6) The words "wholesale price" shall mean the established

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price for which a manufacturer sells a tobacco product, other than cigarettes, to a wholesaler or unclassified acquirer before any discount or other reduction."

Section 253. Section 84-6806, R.C.M. 1947, is amended to read as follows:

"84-6806. **Wholesaler to retain five per cent defrayment — refunds.** The taxes specified in this act that are paid by the wholesaler, shall be paid to the *department* in full less a five per cent (5%) defrayment for his collection and administrative expense and shall be deposited by the *department* in the long-range building sinking fund number 338766. Refunds of the tax paid shall be made as provided in section 84-726, R.C.M. 1947, in cases where the tobacco products purchased become unsalable."

Section 254. Section 84-6807, R.C.M. 1947, is amended to read as follows:

"84-6807. **Rule-making power.** The *department* is authorized to adopt rules for the effective collection and refund of the tax imposed by this act."

Section 255. Section 84-6902, R.C.M. 1947, is amended to read as follows:

"84-6902. **Short title—administration of act.** This act shall be known as and may be cited as the "Corporation Income Tax" and it shall be administered by the state *department of revenue.*"

Section 256. Section 84-6907, R.C.M. 1947, is amended to read as follows:

"84-6907. **Employment of personnel—rules and regulations.** The state *department of revenue* may employ personnel and adopt rules, regulations and forms as the *department* finds necessary to place this act in operation and to carry out its provisions."

Approved: April 4, 1973.

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APPROPRIATIONS AND RESOLUTIONS

ENACTED BY THE

Forty-Third Legislative Assembly

STATE OF MONTANA

1973

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APPROPRIATIONS AND RESOLUTIONS

HOUSE BILL NO. 37

An Act Appropriating Thirty-Two Thousand Three Hundred Twenty Dollars ($32,320) to the Legislative Council from the General Fund for State of Montana Dues to the Council of State Governments for the 1973-1975 Biennium.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is appropriated to the legislative council from the general fund for the payment of state of Montana dues to the council of state governments for the biennium ending June 30, 1975, thirty-two thousand three hundred twenty dollars ($32,320).

Approved: March 10, 1973.

HOUSE BILL NO. 49

An Act Appropriating Ninety Thousand Dollars ($90,000) to the Legislative Council in Reimbursement for Extraordinary Expenses Incurred in Implementing the Provisions of the Montana Constitution of 1972; and for Operation to June 30, 1973; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is appropriated to the legislative council from the general fund the sum of twenty thousand dollars ($20,000) in reimbursement for extraordinary operating expenses incurred by the legislative council in implementing the provisions of the Montana constitution of 1972.

Section 2. This appropriation shall be allotted and may be used by the legislative council during the fiscal period ending June 30, 1973.

Section 3. There is appropriated to the legislative council from the general fund the sum of seventy thousand dollars ($70,000) for operation to the end of the fiscal period, June 30, 1973.

Section 4. This act is effective on its passage and approval.

Approved: March 17, 1973.

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HOUSE BILL NO. 55

An Act to Appropriate Moneys to Various State Agencies for the Biennium Ending June 30, 1975; and Providing for Other Matters Relating to the Appropriations.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget bureau to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative assembly but which have become available from a source other than state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. The appropriations in this act are intended to provide for all expenditures for:

(1) personal services;

(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

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(4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than general fund may be made available by approved budget amendment.

Section 5. Each agency shall submit to the budget bureau, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget bureau for review.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislative assembly in the 1975 biennial budget, unless the new program or the program expansion and its method of financing is approved by the board of regents for the university system and the community colleges or the governor, or his designated representative for all other agencies or units under this act after presentation through the budget bureau.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget bureau.

Section 9. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal funds is restricted by federal provisions.

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Section 10. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

(1) payment of interest and retirement of the state debt;

(2) operation of the legislature;

(3) public schools;

(4) the judiciary; or

(5) salaries of public officers, during their term of office.

Section 11. In addition to the amounts specifically appropriated by this act, there is hereby appropriated to the Montana university system units all federal funds for existing programs, and those funds related to various supporting facilities and organizations such as auxiliary enterprises. All other moneys received from all other sources may be made available by an approved budget amendment.

Section 12. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 13. The following moneys are appropriated for the biennium ending June 30, 1975:

DEPARTMENT OF EDUCATION
AGRICULTURAL EXPERIMENT STATION

	Fiscal Year Ending 6/30/74	Fiscal Year Ending 6/30/75
From General Fund	2,130,000	2,180,000
From General Fund This appropriation, or any proportion thereof, shall be expended only if federal Hatch Act funds are not received for the fiscal year ending June 30, 1974. If such federal Hatch Act funds are received, this appropriation, or any remaining proportion thereof, shall immediately revert back to the general fund. This appropriation is nontransferable between fiscal years and shall not be subject to the budget amendment provisions of section 2.	172,410	
From Earmarked Rev. Fund Fertilizer Acct.	40,000	40,000

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From Earmarked Rev. Fund		
Agri. Exper. Station Acct.		
For payment price, plus seven percent (7%) interest, on contract for deed between Milo C. Roberts and Edith Z. Roberts for use and benefit of agricultural experiment station.	9,180	8,704
BOARD OF PUBLIC EDUCATION		
Board Admin. Program		
From the General Fund	18,750	18,750
BOARD OF REGENTS OF HIGHER EDUCATION		
Board Administration Program		
From Earmarked Rev. Fund		
University Millage	18,750	18,750
Commissioner of Higher Education		
Administration Program		
From General Fund	103,496	106,711
Student Assistance Program		
From General Fund		
For WICHE Administration	36,500	36,500
For WICHE Student Payments	600,100	574,200
For NDEA Matching Loan Funds	25,000	25,000
Higher Education Facilities		
From Fed. & Priv. Rev. Funds		
Executive Sec. Acct.	70,860	73,320
Community College Assistance		
From General Fund		
Flathead Valley Comm. Coll.	491,000	535,000
Miles Community College	245,000	267,000
Dawson Community College	247,000	270,000
COOPERATIVE EXTENSION SERVICE		
From General Fund	695,643	713,643
From General Fund		
For Apiary Regulation	18,857	18,857
From Earmarked Rev. Fund		
Fertilizer Acct.	40,000	40,000
DEAF AND BLIND, SCHOOL FOR		
General Serv. Program		
From General Fund	109,600	111,600
Admin. Program		
From General Fund	64,350	65,550

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Education Program		
From General Fund	340,300	352,300
From General Fund	30,000	30,000
If not matched by federal funds, this appropriation shall revert to the gen- fund at the end of each fiscal year.		
From Fed. & Priv. Rev. Fund		
Deaf and Blind Acct.	76,254	76,254
Deaf & Blind I & I Acct.	40,000	38,000
Care & Custody Program		
From General Fund	169,300	176,300
EASTERN MONTANA COLLEGE		
Programs:		
Instruction	2,359,685	2,291,915
Public Service	3,805	4,000
Academic Support	355,175	360,160
Student Service	192,205	183,545
Institutional Support	1,152,363	1,152,363
From General Fund	2,519,554	2,394,106
From Earmarked Rev. Fund		
Student Fee Acct.	770,000	770,000
University Mill. Acct.	703,679	747,877
From other Treas. Funds	70,000	80,000
HISTORICAL SOCIETY		
Administration Program		
From General Fund	72,253	76,155
Library & Archives Program		
From General Fund	91,886	94,434
From Fed. & Priv. Rev. Fund		
Historical Society Donations Acct.	1,300	1,300
Museum & Galleries Program		
From General Fund	20,000	21,000
From Earmarked Rev. Fund		
Historical Society Acct.	27,876	28,832
From Fed. & Priv. Rev. Fund		
Historical Society Donations Acct.	2,000	2,000
Magazine Program		
From Revolving Fund		
Historical Society Acct.	107,526	110,114
Merchandise Program		
From Revolving Fund		
Historical Society Acct.	235,848	256,336

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LIBRARY COMMISSION		
Gen. Library Serv. Program		
From General Fund	80,850	82,000
From Fed. & Priv. Rev. Fund Library Comm. Acct.	128,965	133,708
From General Fund	58,806	58,806
This appropriation shall be expended only if federal moneys are not received. If such federal funds are received, this appropriation shall revert to the general fund.		
Library Networks Program		
From General Fund	20,125	22,000
From Fed. & Priv. Rev. Fund Library Comm. Acct.	34,352	35,884
From General Fund	17,175	17,175
This appropriation shall be expended only if federal moneys are not received. If such federal funds are received, this appropriation shall revert to the general fund.		
Institutional Library Services Program		
From General Fund	35,000	36,000
From Fed. & Priv. Rev. Fund Library Comm. Acct.	45,176	46,630
From General Fund	19,755	19,755
This appropriation shall be expended only if federal moneys are not received. If such federal funds are received, this appropriation shall revert to the general fund.		
Library Serv. for Physically Handicapped Program		
From General Fund	22,000	23,000
From General Fund	52,072	47,707
This appropriation shall be expended only if federal moneys are not received. If such federal funds are received, this appropriation shall revert to the general fund.		
From Fed. & Priv. Rev. Fund Library Comm. Acct.	52,072	47,707
Administration Program		
From General Fund	16,500	20,000

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From Fed. & Priv. Rev. Fund		
Library Comm. Acct.	26,785	24,605
MONTANA ARTS COUNCIL		
Promotion of Arts Program		
From General Fund	27,550	27,950
From Fed. & Priv. Rev. Fund		
Mont. Arts Council		
Acct.	3,063	3,575
MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY		
Programs:		
Instruction	870,680	854,646
Organized Research	486,717	512,611
Academic Support	83,351	85,414
Student Services	30,052	29,531
Institutional Support	515,113	535,569
From General Fund	1,552,882	1,568,224
From Earmarked Rev. Fund		
Student Fee Acct.	210,000	210,000
University Mill. Acct.	183,031	194,547
From other Treas. Funds	40,000	45,000
MONTANA STATE UNIVERSITY		
Programs:		
Instruction	8,552,783	8,884,040
Social Justice Studies	33,048	34,257
Organized Research	261,235	275,618
Public Service	120,370	127,010
Academic Support	1,196,613	1,255,220
Student Service	639,515	664,285
Institutional Support	2,576,293	2,710,403
From General Fund	7,962,134	8,398,318
From Earmarked Rev. Fund		
Student Fees Acct.	2,835,000	2,835,000
University Mill. Acct.	2,065,303	2,195,095
From other Treas. Funds	517,420	522,420
UNIVERSITY OF MONTANA		
Programs:		
Instruction	8,782,034	9,105,579
Organized Research	173,527	182,695
Public Service	97,455	102,618
Academic Support	1,662,797	1,736,275
Student Services	475,094	492,381
Institutional Support	3,131,835	3,287,675
From General Fund	7,981,109	8,411,235

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From Earmarked Rev. Fund		
Student Fees Acct.	3,560,000	3,560,000
University Mill. Acct.	2,225,518	2,365,373
From other Treas. Funds	556,115	570,615
FORESTRY AND CONSERVATION EXPERIMENT STATION		
From General Fund	208,605	219,628
VOCATIONAL EDUCATION, ADVISORY COUNCIL FOR		
Administration Program		
From General Fund	25,891	28,311
From Fed. & Priv. Rev. Fund		
Advisory Council for Vocational Ed. Acct.	31,964	31,964
WESTERN MONTANA COLLEGE		
Programs:		
Instruction	686,048	685,290
Public Service	2,150	2,270
Academic Support	67,045	68,965
Student Services	18,810	18,797
Institutional Support	537,773	561,963
From General Fund	795,046	802,133
From Earmarked Rev. Fund		
Student Fees Acct.	240,000	240,000
University Mill. Acct.	251,780	267,652
From other Treas. Funds	25,000	27,500
NORTHERN MONTANA COLLEGE		
Programs:		
Instruction	1,220,500	1,290,500
Public Serivce	21,000	22,000
Academic Support	224,000	236,000
Student Services	73,000	74,000
Institutional Support	497,436	516,742
From General Fund	1,370,703	1,455,746
From Earmarked Rev. Fund		
Student Fees Acct.	285,000	285,000
University Mill. Acct.	291,784	310,047
From other Treas. Funds	88,449	88,449
SUPERINTENDENT OF PUBLIC INSTRUCTION		
Dist. of Public Funds Program		
From General Fund for Manpower Devel.	36,078	37,882

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Vocational Ed.		
Five Vocational-Technical Centers	2,566,000	2,623,500
Secondary & Post-Secondary	550,000	625,000
Northern Montana College for Teacher Training	56,000	62,000

In addition to the amounts specifically appropriated by this section to the above five vocational-technical centers, there is hereby appropriated to the superintendent of public instruction for distribution to the vocational-technical centers for personal services, operation and equipment the moneys collected from the establishment of a student fee of fifty dollars ($50) per student collected at the time of registration.

From the Earmarked Rev. Fund		
Student Fee Acct.		
For Vocational Ed.		
Five Vo-Tech. Centers	180,000	220,000
From Earmarked Rev. Fund		
Traffic Safety		
Ed. Acct.	400,900	407,400

Section 14. The provisions set forth in this section are limitations on the appropriations made in this act, provided, however, that these limitations do not apply to the distribution of public funds under the superintendent of public instruction. It is the purpose of the legislature in enacting this bill only to appropriate funds and to restrict and limit by its provisions the amount and conditions under which the appropriations can be expended. Except as otherwise provided in this act, the expenditures of appropriations are hereby subject to the following general and specific provisions:

(1) All expenditures of funds appropriated by this act for purpose of travel, transportation, and vacation and sick leave are subject to the provisions of law expressed in title 59, R.C.M. 1947.

(2) All expenditures of funds appropriated by this act for the purchase of property, materials and supplies are subject to the provisions of law expressed in title 82, chapter 19, R.C.M. 1947.

(3) All expenditures of funds appropriated by this act shall be made in accordance with the provisions of section 82-109, R.C.M. 1947, which specifies that expenditures shall be applied against nongeneral fund moneys before general fund moneys.

(4) All moneys collected or received by agencies subject to this act from any source whatsoever, including federal grants for research and operations, shall be deposited in the state treasury

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pursuant to the provisions of title 79, R.C.M. 1947, except that the department of administration may, pursuant to section 79-603, R.C.M. 1947, permit any agency subject to this act to retain in its possession moneys that would otherwise be deposited in the state treasury.

(5) All expenditures of funds appropriated by this act shall be reported and accounted for in accordance with procedures and systems established by the department of administration pursuant to section 82-110, R.C.M. 1947.

Section 15. The board of regents of higher education shall provide for the transfers to the legislative audit revolving fund account the following moneys from the appropriations made in section 13, or other available moneys received from other sources, to finance a legislative audit of the financial affairs and transactions of the Montana university system, including the office of executive secretary, during the 1973-75 biennium.

For the fiscal year ending June 30, 1974	63,750
For the fiscal year ending June 30, 1975	63,750

Approved: March 29, 1973.

HOUSE BILL NO. 56

An Act to Appropriate Moneys to Various State Agencies for the Biennium Ending June 30, 1975; and Providing for Other Matters Relating to the Appropriations.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget bureau to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative

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assembly but which have become available from a source other than state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. The appropriations in this act are intended to provide for all expenditures for:

(1) personal services;

(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

(4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than general fund may be made available by approved budget amendment.

Section 5. Each agency shall submit to the budget bureau, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget bureau for review.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislative assembly in the 1975 biennial budget,

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unless the new program or the program expansion and its method of financing is approved by the governor, or his designated representative after presentation through the budget bureau.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget bureau.

Section 9. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal funds is restricted by federal provisions.

Section 10. The governor may reduce any appropriation by not more than fifteen per cent (15%) except appropriations for:

(1) payment of interest and retirement of the state debt;

(2) operation of the legislature;

(3) public schools;

(4) the judiciary; or

(5) salaries of public officers, during their term of office.

Section 11. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 12. The following moneys are appropriated for the biennium ending June 30, 1975:

	Fiscal Year Ending 6/30/74	Fiscal Year Ending 6/30/75
DEPARTMENT OF FISH & GAME		
Centralized Serv. Program		
From Earmarked Rev. Fund		
Fish & Game Acct.	1,100,994	1,061,980

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Environment & Info. Program		
From Earmarked Rev. Fund		
Fish & Game Acct.	766,556	800,798
From Fed. & Priv. Rev. Fund		
Fish & Game Acct.	79,199	84,743
Fisheries Management Program		
From Earmarked Rev. Fund		
Fish & Game Acct.	990,649	993,700
From Fed. & Priv. Rev. Fund		
Fish and Game Acct.	352,701	376,342
Law Enforcement Program		
From Earmarked Rev. Fund		
Fish & Game Acct.	1,555,095	1,651,571
Motorboat Cert. Acct.	30,000	30,000
From Fed. & Priv. Rev. Fund		
Motorboat Safety Acct.	40,000	40,000
Fish & Game Acct.	15,000	15,000
Game Management Program		
From Earmarked Rev. Fund		
Fish & Game Acct.	546,303	550,903
From Fed. & Priv. Rev. Fund		
Fish & Game Acct.	1,080,653	1,146,849
Recreation & Parks Program		
From General Fund	307,201	320,000
From Earmarked Rev. Fund		
State Parks Misc. Acct.	125,190	133,953
Fish & Game Acct.	357,876	382,927
State Parks Acct.	176,550	188,908
From Fed. & Priv Rev. Fund		
Recreation Acct.	10,700	11,449
Planning Program		
From the Earmarked Rev. Fund		
Fish & Game Acct.	16,731	18,185
From the Fed. & Priv. Rev. Fund		
Fish & Game Acct.	39,693	44,053
DEPARTMENT OF HEALTH & ENVIRONMENTAL SCIENCES		
Comp. Health Planning Program		
From General Fund	50,723	58,889
From Fed. & Priv. Rev. Fund		
Pub. Health Acct.	260,989	295,155
Management Serv. Program		
From General Fund	237,242	255,149
From Fed. & Priv. Rev. Fund		
Pub. Health Acct.	294,925	301,311

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Communicable Disease Control Program		
From General Fund	76,943	85,749
From Fed. & Priv. Rev. Fund		
Pub. Health Acct.	250,976	256,643
Health Serv. Program		
From General Fund	519,820	533,193
From Fed. & Priv. Rev. Fund		
Pub. Health Acct.	1,487,226	1,500,570
Heart & Chest X-Ray Acct.	5,000	5,000
Health Care Facilities Program		
From General Fund	105,138	106,220
From Fed. & Priv. Rev. Fund		
Pub. Health Acct.	437,217	442,024
Environmental Health Program		
From General Fund	481,353	510,829
From Fed. & Priv. Rev. Fund		
Pub. Health Acct.	441,502	450,096
From Revolving Fund		
Transient Lodging Acct.	5,000	5,000
Water Pollution Control Construction Program		
From General Fund	1,653,000	0
Water & Waste Water Operators Program		
From Earmarked Rev. Fund		
Water & Waste Water Operators Acct.	9,799	10,030
Sanitarian Advisory Council Program		
From Earmarked Rev. Fund		
Sanitarians Reg. Acct.	660	660
DEPARTMENT OF LABOR & INDUSTRY		
Labor Standards Division		
Labor Stand. Div. Program		
From General Fund	146,770	152,585
From Earmarked Rev. Fund		
Labor & Industry Priv. Emp. Acct.	1,200	1,400
From Fed. & Priv. Rev. Fund		
Labor & Industry Acct.	50,000	50,000

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Employment Security Division		
Unemployment Ins. &		
Employment Serv. Program		
From Fed. & Priv. Rev. Fund		
Emp. Security Admin.		
Acct.	5,014,271	5,500,241
Job Corps Program		
From Fed. & Priv. Rev. Fund		
Emp. Security Admin.		
Acct.	87,148	92,211
Manpower Development &		
Training Program		
From Fed. & Priv. Rev. Fund		
Emp. Security Admin.		
Acct.	466,477	546,595
MDTA Payments		
Acct.	825,000	850,000
Concentrated Emp. Program		
From Fed. & Priv. Rev. Fund		
Emp. Security Admin.		
Acct.	580,761	608,835
ESD Concentrated		
Emp. Acct.	590,000	590,000
Work Incentive Program		
From Fed. & Priv. Rev. Fund		
Emp. Security Admin.		
Acct.	1,916,240	2,106,203
ESD Work Incentive		
Acct.	790,000	790,000
NABS-Jobs Program		
From Fed. & Priv. Rev. Fund		
Emp. Security Admin.		
Acct.	202,928	239,256
Workmens Comp. Division		
Board Program		
From Earmarked Rev. Fund		
Workmens Comp. Div.		
Acct.	1,250,706	1,369,874
Volunteer Firemens		
Comp. Acct.	125,000	125,000
State Fund Program		
From Earmarked Rev. Fund		
Loss Adjustment Acct.	962,596	1,034,643
Silicosis Program		
From General Fund	612,840	539,545

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OSHA Safety Program		
From Fed. & Priv. Rev. Fund		
Occupational Safety & Health Acct.	303,907	370,276
OSHA Stat. Program		
From Fed. & Priv. Rev. Fund		
OSHA Stat. Program Fed. Stat. Study Acct.	14,923	15,525
OSHA Occupational Health Program		
From Fed. & Priv. Rev. Fund		
Workmens Comp. Health Study Acct.	63,309	90,685
DEPARTMENT OF REVENUE		
Operations Program		
From the General Fund	559,331	535,567
From the Earmarked Rev. Fund		
Highway Account	50,000	50,000
Audit & Accounting Program		
From the General Fund	138,550	142,230
Research Program		
From the General Fund	86,198	84,459
Liquor Division Program		
From the Earmarked Rev. Fund		
Liquor Control Account	3,533,474	3,697,624
Incorp. Cities & Towns Beer Tax Account	1,195,600	1,320,660
From the Revolving Fund		
Liquor Control Account	23,162,314	24,002,330
Income & Inheritance Tax Program		
From the General Fund	678,662	716,116
From the Earmarked Rev. Fund		
Unclaimed Property Acct.	12,000	12,000
Corporation Taxes Program		
From the General Fund	189,197	190,279
Property Taxes Program		
From the General Fund	499,949	536,845
From the Earmarked Rev. Fund		
Property Tax Account	2,929,000	3,021,000
Miscellaneous Taxes Program		
From the General Fund	113,580	118,955
From the Earmarked Rev. Fund		
Cigarette Enforcement Acct.	19,000	19,000

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Motor Fuel Tax Program		
Earmarked Rev. Fund		
Highway Account	274,420	302,198
Revolving Fund		
Board of Equal. Audit. Acct.	7,200	7,200
Legal Division Program		
From the General Fund	138,218	140,218
DEPARTMENT OF PROFESSIONAL & OCCUPATIONAL LICENSING		
Centralized Serv. Program		
From Earmarked Rev. Fund		
Prof. & Occup. Admin. Serv. Acct.	32,499	33,780
Licensing Program		
From Earmarked Rev. Fund		
Abstractors Bd. Acct.	995	975
Architectural Examiners Acct.	6,210	6,290
Vet. Memorial Acct.	898	866
Barber Examiners Acct.	4,678	4,470
Chiropractic Examiners Acct.	3,185	3,438
Cosmetology Bd. Acct.	26,288	27,053
Dental Examiners Acct.	6,580	7,115
Elec. Bd. Acct.	10,295	10,582
Bd. of Hearing Aid Dispensers Acct.	2,540	2,550
Horse Racing Comm. Acct.	12,852	15,970
Bd. of Masseurs Acct.	2,380	2,395
Bd. of Medical Examiners Acct.	17,824	18,374
Morticians Bd. Acct.	5,970	6,196
Bd. of Nursing Acct.	41,605	42,915
Bd. of Examiners for Nursing Home Admin. Acct.	9,229	9,505
Optometry Examiners Acct.	4,426	4,485
Ostepathic Examiners Acct.	475	492
Bd. of Pharmacy Acct.	10,490	10,460
Plumbing Examiners Acct.	9,470	9,740
Prof. Eng. Acct.	14,454	14,690
Bd. of Public Accountancy Acct.	26,573	29,512

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Bd. of Psychologists Acct.	1,209	1,222
Real Estate Comm. Acct.	35,190	38,490
From Earmarked Rev. Fund		
Vet. Medical Examiners Acct.	2,135	2,265
Water Well Contractors Acct.	1,556	1,596
Prof. & Occup. Central Serv. Acct.	12,452	12,844
Enforcement Program		
From Earmarked Rev. Fund		
Barber Examiners Acct.	2,000	1,900
Cosmetology Bd. Acct.	11,868	11,493
Electrical Bd. Acct.	125,559	129,835
Horse Racing Comm. Acct.	16,900	18,200
Bd. of Medical Examiners Acct.	7,990	8,157
Bd. of Nursing Acct.	6,480	6,630
Bd. of Pharmacy Acct.	18,300	19,100
Plumbing Examiners Acct.	25,403	23,359
Prof. Eng. Acct.	4,000	5,935
Real Estate Comm. Acct.	27,967	30,667
Water Well Contractors Acct.	3,046	3,091
Prof. & Occup. Central Serv. Acct.	1,850	1,910
DEPARTMENT OF NATURAL RESOURCES & CONSERVATION		
Centralized Serv. Program		
From the General Fund	426,217	444,033
From the Earmarked Rev. Fund		
Oil & Gas Account	22,400	22,500
Grass Conservation Acct.	1,545	1,607
Oil & Gas Regulation Program		
From the Earmarked Rev. Fund		
Oil & Gas Account	206,012	213,972
Grazing Dist. Sup. Program		
From the Earmarked Rev. Fund		
Grass Conservation Acct.	14,006	14,649

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Conservation Dist. Sup. Program		
From the General Fund	31,038	32,017
Watershed Planning Program		
From the General Fund	65,000	65,000
Rangeland Management Program		
From the General Fund	16,527	17,244
Water Engineering Program		
From the General Fund	444,714	459,849
From the Earmarked Rev. Fund		
Water Resources Acct.	150,000	155,000
From the Fed. & Priv. Rev. Fund		
Water Resources Acct.	350,000	350,000
Water Resources & Planning Program		
From the General Fund	468,164	488,157
From the Fed. & Priv. Rev. Fund		
Water Resources Acct.	75,000	75,000
Forest Management Program		
From the General Fund	387,752	395,799
From the Earmarked Rev. Fund		
Timber Stand Improve. Acct.	80,490	80,490
Forest Nursery Acct.	43,950	43,950
From the Fed. & Priv. Rev. Fund		
Clark-McNary Acct.	4,000	4,000
Coop. Forest Mgmt. Acct.	102,400	102,400
Fire Protection Program		
From the General Fund	611,680	626,504
From the Earmarked Rev. Fund		
Slash & Brush Disposal Acct.	350,000	350,000
From the Fed. & Priv. Rev. Fund		
Clark-McNary Acct.	547,627	547,983
Institution Forestry Work Program		
From the General Fund	58,020	60,298
Utility Siting Program		
From the General Fund	140,000	144,000

All moneys collected from filing fees under section 6(2) of the Montana Utility Siting Act of 1973 and deposited in the general fund, including moneys deposited since the effective date of that act, are appropriated to the department of natural resources and conservation for carrying out the responsibilities of the department under that act.

The appropriations for the department of natural resources and conservation-water engineering program, includes amounts for

capital land and/or buildings or other improvements for which the provisions of section 3, paragraph 4, of this act do not apply.

Approved: March 29, 1973.

HOUSE BILL NO. 57

An Act to Appropriate Moneys to Various State Agencies for the Biennium Ending June 30, 1975; and Providing for Other Matters Relating to the Appropriations.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget bureau to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative assembly but which have become available from a source other than state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. The appropriations in this act are intended to provide for all expenditures for:

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(1) personal services;

(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

(4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than general fund may be made available by approved budget amendment.

Section 5. Each agency shall submit to the budget bureau, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget bureau for review.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislative assembly in the 1975 biennial budget, unless the new program or the program expansion and its method of financing is approved by the governor, or his designated representative after presentation through the budget bureau.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget bureau.

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Section 9. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal funds is restricted by federal provisions.

Section 10. The governor may reduce any appropriation by not more than fifteen per cent (15%) except appropriations for:

(1) payment of interest and retirement of the state debt;

(2) operation of the legislature;

(3) public schools;

(4) the judiciary; or

(5) salaries of public officers, during their term of office.

Section 11. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 12. The following moneys are appropriated for the biennium ending June 30, 1975:

	Fiscal Year Ending 6/30/74	Fiscal Year Ending 6/30/75
DEPARTMENT OF ADMINISTRATION		
Central Admin. Program		
From General Fund	75,003	76,603
Accounting Program		
From General Fund	381,871	416,251
Architecture & Eng. Program		
From General Fund	100,000	100,000
From Revolving Fund		
Dept. of Administration		
Construction Acct.	106,205	115,356
Budget Program		
From General Fund	166,089	179,956
Legislative Liaison Program		
From General Fund	25,000	25,000
Data Processing Program		
From Revolving Fund		
Central D.P. Acct.	1,181,330	1,307,885
General Services Program		
From General Fund	406,668	412,562

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From Fed. & Priv. Rev. Fund		
Capitol Bldg. Acct.	140,000	140,000
From Revolving Fund		
Central Services Acct.	1,031,023	1,053,316
Management Systems Program		
From General Fund	107,196	109,191
Purchasing Program		
From General Fund	153,256	159,203
Investments Program		
From General Fund	69,957	68,819
From Revolving Fund	118,743	107,946
Communications Program		
From General Fund	46,293	47,384
From Fed. & Priv. Rev. Fund		
Communications Acct.	48,958	49,301
Emergency & Disaster Program		
From General Fund	375,000	375,000
Intergovernmental Personnel Program		
From General Fund	133,986	118,464
From Fed. & Priv. Rev. Fund		
Interg. Personnel Acct.	136,723	138,535
From Revolving Fund		
Interg. Training Acct.	2,000	2,000
Records Management Program		
From General Fund	15,000	15,000
From Revolving Fund		
Central Serv. Acct.	17,487	25,819
Fire & Casualty Ins. Program		
From General Fund	512,400	548,800
From Earmarked Rev. Fund		
University Millage Acct.	238,000	285,600
Building Standards Program		
From General Fund	16,866	18,126
Passenger Tramway Safety Program		
From Earmarked Rev. Fund		
Passenger Tramway Safety Acct.	1,500	1,500
DEPARTMENT OF ADMINISTRATION—		
JOINT MERIT SYSTEM COUNCIL		
Personnel Services Program		
From Earmarked Rev. Fund		
Joint Merit System Acct.	105,948	109,867

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DEPARTMENT OF ADMINISTRATION— PUBLIC EMPLOYEES RETIREMENT SYSTEM		
Pub. Emp. Retirement Program		
From General Fund	2,000	2,000
From Earmarked Rev. Fund		
Volunteer Firemens Acct.	19,000	119,000
Pub. Emp. Retire. Acct.	241,817	251,556
DEPARTMENT OF ADMINISTRATION— TEACHERS RETIREMENT BOARD		
Teachers Retirement Program		
From Earmarked Rev. Fund		
Teachers Retire. Acct.	161,481	149,294
DEPARTMENT OF ADMINISTRATION— BOARD OF EXAMINERS		
Examination & Review Program		
From General Fund	23,200	24,179
BOARD OF TAX APPEALS		
From General Fund	179,695	175,668
DEPARTMENT OF ADMINISTRATION		
Extradition & Trans. of Prisoners Program		
From General Fund	40,000	40,000
Interim Projects Program		
From General Fund	20,250	20,250
DEPARTMENT OF AGRICULTURE		
Administration Program		
From General Fund	93,286	96,583
From Earmarked Rev. Fund		
Commercial Feed Acct	700	700
Commercial Fertilizer Acct.	703	703
From Revolving Fund		
Wheat Research & Marketing Acct.	1,104	1,104
Apiary Regulation Program		
From General Fund	12,505	12,507
Agricultural Stat. Program		
From General Fund	23,776	27,036
From Fed. & Priv. Rev. Fund		
Marketing Serv. Acct.	8,400	8,850
From Revolving Fund		
Wheat Research & Marketing Acct.	6,700	7,068
Pesticide Control Program		
From General Fund	83,009	90,325

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Commercial Feed & Fertilizer Program		
From Earmarked Rev. Fund		
Commercial Feed Acct.	36,704	36,704
Commercial Fertilizer Acct.	46,310	49,066
Horticulture Program		
From General Fund	145,666	146,899
Wheat Research &		
Marketing Program		
From Revolving Fund		
Wheat Research & Marketing Acct.	203,036	202,691
Transportation Program		
From General Fund	28,895	29,930
Marketing Coordinator Program		
From General Fund	20,599	21,119
Grain Laboratories Program		
From Earmarked Rev. Fund		
Grain Serv. Acct.	203,847	209,018
Hail Insurance Program		
From Earmarked Rev. Fund		
Administration Acct.	63,311	66,554
DEPARTMENT OF BUSINESS REGULATION		
Centralized Services Program		
From General Fund	50,330	51,912
From Earmarked Rev. Fund		
Milk Control Acct.	11,268	11,796
Food Dist. Acct.	3,756	3,932
Weights & Measures Program		
From General Fund	159,656	171,116
Financial Program		
From General Fund	291,107	300,234
Consumer Protection Division		
From General Fund	50,000	50,000
Trade Regulation Program		
From Earmarked Rev. Fund		
Food Dist. Acct.	60,000	60,000
Milk Control Program		
From Earmarked Rev. Fund		
Milk Control Acct.	124,326	128,140
DEPARTMENT OF INTERGOVERNMENTAL RELATIONS		
Aeronautics-Admin. Program		
From Earmarked Rev. Fund		
Aeronautics Comm. Acct.	184,335	172,741

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Airport Develop. Program		
From Earmarked Rev. Fund		
Aeronautics Comm. Acct.	195,314	223,211
Airport Operations Program		
From Earmarked Rev. Fund		
Aeronautics Comm. Acct.	89,328	92,250
Navigational Aids Program		
From Earmarked Rev. Fund		
Aeronautics Comm. Acct.	48,936	49,688
Safety & Compliance Program		
From Earmarked Rev. Fund		
Aeronautics Comm. Acct.	48,952	50,225
Aviation & Space Ed. Program		
From Earmarked Rev. Fund		
Aeronautics Comm. Acct.	29,036	30,235
Economic Opportunity Program		
From General Fund	25,000	25,000
From Fed. & Priv. Rev. Fund		
Economic Opportunity		
Coordinator Acct.	324,400	326,800
Highway Traffic Safety Program		
From Earmarked Rev. Fund		
Highway Acct.	24,000	25,000
From Fed. & Priv. Rev. Fund		
Traffic Safety Coordinator		
Acct.	31,300	32,300
Traffic Safety Clause B Fund		
Acct.	81,119	87,276
Municipal Regulation Program		
From General Fund	305,423	325,789
From Fed. & Priv. Rev. Fund		
Municipal Reg. Acct.	18,000	20,000
Local Accounting Assistance		
Program		
From General Fund	25,000	25,000
Planning & Economic Develop.—		
Administration Program		
From General Fund	31,563	32,662
From Earmarked Rev. Fund		
Planning & Economic Develop.		
Publications Acct.	2,500	3,500
From Fed. & Priv. Rev. Fund		
Planning Board Acct.	26,251	26,924

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Research Program		
From General Fund	39,800	43,700
From Fed. & Priv. Rev. Fund		
Planning Board Acct.	49,540	51,484
Information Systems Program		
From General Fund	53,500	57,570
From Fed. & Priv. Rev. Fund		
Planning Board Acct.	63,624	67,169
From Revolving Fund		
File Management		
Systems Acct.	5,000	5,000
Economic Development Program		
From General Fund	88,255	91,236
From Fed. & Priv. Rev. Fund		
Planning Board Acct.	54,719	66,171
Community Development		
Program		
From General Fund	167,313	182,667
From Fed. & Priv. Rev. Fund		
Planning Board Acct.	191,087	192,133
Centralized Services Program		
From General Fund	99,200	102,100
From General Fund for		
Coordinator-Indian Affairs	26,000	27,500
Any federal or private funds may be appropriated.		
From General Fund for state membership in		
Federation of Rocky		
Mountain States &		
Western Nuclear Compact	20,000	20,000
From Earmarked Rev. Fund		
Highway Acct.	6,000	6,000
Aeronautics Comm. Acct.	54,400	56,100
From Fed. & Priv. Rev. Fund		
Economic Opportunity		
Coordinator Acct.	55,200	56,600
Traffic Safety Coordinator		
Acct.	7,700	7,700
Traffic Safety Clause B		
Funds Acct.	19,600	20,500
Planning Board Acct.	60,500	62,200

The appropriation for the department of intergovernmental relations, airport development program, includes amounts for buildings and other improvements for which the provisions of section 3, paragraph 4, of this act do not apply.

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DEPARTMENT OF STATE LANDS

Central Management Program		
From General Fund	142,298	145,997
Grants and Benefits		
From General Fund	160,000	160,000
Mining Reclamation Program		
From General Fund	215,000	225,000
From Earmarked Rev. Fund Land Reclamation Acct. All available funds are hereby appropriated.		
Land Administration Program		
From General Fund	114,994	118,283
Resource Development Program		
From Earmarked Rev. Fund Resource Devel. Acct.	240,844	242,449

The appropriation for the department of state lands includes amounts for capitol land and/or buildings for which the provisions of section 3, paragraph 4, of this act do not apply.

DEPARTMENT OF LIVESTOCK

Centralized Services Program		
From General Fund	5,686	4,690
From Earmarked Rev. Fund		
Livestock Comm. Acct.	39,249	40,935
Livestock Sanitary Bd. Acct.	31,923	33,750
Animal Health Admin. Program		
From General Fund	21,055	22,427
From Earmarked Rev. Fund		
Livestock Sanitary Bd. Acct.	27,102	27,102
Diagnostic Lab. Program		
From General Fund	85,360	99,290
From Earmarked Rev. Fund		
Livestock Sanitary Bd. Acct.	82,731	77,485
Disease Control Program		
From Earmarked Rev. Fund		
Livestock Sanitary Bd. Acct.	214,463	220,836
Milk & Egg Program		
From General Fund	116,528	121,592
From Fed. & Priv. Rev. Fund		
Livestock Sanitary Bd. Acct.	10,000	10,000
Inspection & Control Program		
From Earmarked Rev. Fund		
Livestock Comm. Acct.	755,758	781,268

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Predatory Animal Control Program		
From Earmarked Rev. Fund		
Livestock Comm. Acct.	165,821	166,510
Rabies Control Program		
From General Fund	5,000	5,000
DEPARTMENT OF MILITARY AFFAIRS		
Administration Program		
From General Fund	103,802	106,559
Army National Guard Program		
From General Fund	282,916	287,004
From Fed. & Priv. Rev. Fund		
National Guard Acct.	56,967	57,920
Air National Guard Program		
From General Fund	44,485	45,934
From Fed. & Priv. Rev. Fund		
National Guard Acct.	41,180	42,655
Civil Defense Coor. Program		
From General Fund	84,951	88,473
From Fed. & Priv. Rev. Fund		
Civil Defense Acct.	84,951	88,472
Civil Defense Calibration Acct.	34,656	36,888
Civil Defense Community Acct.	47,088	49,965
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICE		
Economic Assistance Program		
From General Fund	9,290,804	9,285,520
Social Services Program		
From General Fund		
For Operations	444,430	449,291
For Legal Services	50,000	50,000
From Fed. & Priv. Rev. Fund		
Public Welfare Acct.		
For Operations	2,788,947	2,730,270
For Legal Services	150,000	150,000
Eligibility Determination Program		
From General Fund	317,706	327,367
From Fed. & Priv. Rev. Fund		
Public Welfare Acct.	1,267,000	1,308,404
Centralized Services Program		
From General Fund	291,203	295,055
From Fed. & Priv. Rev. Fund		
Public Welfare Acct.	809,900	839,531

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Vocational Rehab. Acct.	121,478	130,403
Special Services Program		
From General Fund	52,021	54,623
From Fed. & Priv. Rev. Fund		
Public Welfare Acct.	225,510	236,732
Visual Services Program		
From General Fund	118,501	123,090
From Fed. & Priv. Rev. Fund		
Vocational Rehab. Acct.	474,002	492,359
Vocational Guidance Program		
From General Fund	400,728	422,118
From Fed. & Priv. Rev. Fund		
Vocational Rehab. Acct.	2,152,913	2,238,471
Disability Determination Program		
From Fed. & Priv. Rev. Fund		
Vocational Rehab. Acct.	295,923	338,960
Youth Development Program		
From General Fund	50,000	50,000
From Fed. & Priv. Rev. Fund		
Vocational Rehab. Acct.	300,000	300,000
Services to the Aged Program		
From General Fund	25,000	25,000
From Fed. & Priv. Rev. Fund		
Commission on Aging Acct.	100,831	83,536
Veterans Affairs Program		
From General Fund	209,523	217,944

Any funds appropriated to the department of public welfare which are unexpended during the biennium ending June 30, 1973, are hereby reappropriated to the department of social and rehabilitation services for the biennium ending June 30, 1975. In the event the general fund money for legal services does not generate matching federal funds they shall revert to the general fund.

DEPARTMENT OF HIGHWAYS

General Operation Program		
From Earmarked Rev. Fund		
Highway Acct.	3,180,026	3,289,575
From Fed. & Priv. Rev. Fund		
Highway Trust Acct.	1,706,012	1,706,012
Construction Program		
From Earmarked Rev. Fund		
Highway Acct.	13,852,287	20,684,366
From Earmarked Rev. Fund		
Highway Acct. for Railroad		
Crossing Protection	100,000	100,000

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Transfer of this appropriation may be made by approved budget amendment.		
From Fed. & Priv. Rev. Fund		
Highway Trust Acct.	43,897,115	77,757,714
Maintenance Program		
From Earmarked Rev. Fund		
Highway Acct.	16,983,013	18,171,824
Advertising Program		
From Earmarked Rev. Fund		
Highway Acct.	750,000	750,000
Preconstruction Program		
From Earmarked Rev. Fund		
Highway Acct.	6,622,707	6,818,336
From Fed. & Priv. Rev. Fund		
Highway Trust Acct.	16,803,920	18,047,950
Reimburseable Serv. Program		
From Revolving Fund		
Highway Dept. Serv. Acct.	625,515	625,515
State Motor Pool Program		
From Revolving Fund		
Reimb. Motor Veh. Pool Acct.	3,575,550	3,902,682

The appropriations for the department of highways includes amounts for capital land and/or buildings, for which the provisions of section 3, paragraph 4, of this act do not apply. From the revolving fund: the amount of $250,000 is appropriated from the earmarked revenue fund, state highway account, to establish a revolving fund, state highway account, to cover all reimbursable expenditures. Any funds available to the Montana highway commission for distribution to cities and counties under section 84-1840, R.C.M. 1947, which are unexpended during the biennium ending June 30, 1973, are hereby reappropriated to the biennium ending June 30, 1975. The provisions of section 3 relating to annual reversions shall not apply to appropriations made under section 84-1840, aid to cities and counties.

Approved: March 29, 1973.

HOUSE BILL NO. 574

An Act to Appropriate Moneys for Payment of Employer's Contribution to the Public Employees' Retirement System for the Services of Members of the Legislative Assembly; and Providing an Effective Date.

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Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is appropriated the sum of sixty-seven thousand dollars ($67,000) from the general fund to the legislative assembly for payment of the employer's contribution of public employees' retirement for the services of members of the legislative assembly.

Section 2. This act is effective on its passage and approval.

Approved: March 17, 1973.

HOUSE BILL NO. 575

An Act Appropriating Moneys for Certain State Agencies of Government for the Biennium Ending June 30, 1973; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The following amounts of money are appropriated for the biennium ending June 30, 1973:

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

From the general fund to the appropriation of the Department of Social and Rehabilitation Services as reimbursement for grant-in-aid payments made to counties during the fiscal year 1971-72, five hundred fifty-two thousand six hundred sixty-eight dollars .....$ 552,668

From the general fund for payment of grant-in-aid to counties under section 71-311, R.C.M. 1947, one million eighty-five thousand dollars .....$ 1,085,000

From the general fund for payments to nursing homes including retroactive payment of costs incurred since July 1, 1972, one hundred twenty thousand dollars .....$ 120,000

STATE TREASURER

From the general fund, five thousand dollars .....$ 5,000

LEGISLATIVE ASSEMBLY

From the general fund for payment of the cost of printing and mailing of House Journals of the Forty-Second Legislative Assembly, including interest at six per cent (6%) per annum from March 1, 1972 to March 31, 1973, sixteen thousand dollars .....$ 16,000

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SECRETARY OF STATE

From the general fund, thirty-five thousand six hundred ninety-three dollars ..... $ 35,693

There is hereby transferred to the general fund appropriation for the Secretary of State from the general fund appropriation for elections relating to the Constitutional Convention, appropriation number 12255, fourteen thousand five hundred ninety-four dollars ..... $ 14,594

CONSTITUTIONAL CONVENTION COMMISSION

There is hereby transferred from the general fund appropriation of the Constitutional Convention, appropriation number 13001, to the Board of Examiners for payment of remaining obligations of the Constitutional Convention Commission, including interest at six per cent (6%) per annum from January 1, 1972 to March 31, 1973 on unpaid printing bills, thirteen thousand five hundred dollars ..... $ 13,500

BOARD OF EXAMINERS

From the general fund for court costs relative to litigation regarding reapportionment, three hundred ninety-three dollars $393

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

All moneys collected from filing fees under section 6(2) of the Montana Utility Siting Act of 1973 and deposited in the general fund since the effective date of that act are appropriated to the department of natural resources and conservation.

From the general fund for administration of the Montana Utility Siting Act of 1973, forty-four thousand nine hundred and sixty dollars ..... $ 44,960

DEPARTMENT OF LAW ENFORCEMENT AND PUBLIC SAFETY

There is hereby appropriated from the earmarked revenue fund, motor vehicles account, for updating the filing of motor vehicle registration forms, eleven thousand dollars ..... $ 11,000

DEPARTMENT OF REVENUE

From the general fund for payment of data processing costs for systems design, forty thousand dollars ..... $ 40,000

Section 2. This act is effective on its passage and approval.

Approved: March 27, 1973.

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HOUSE BILL NO. 581

An Act Appropriating Sixty-Seven Thousand Nine Hundred Sixty-Two Dollars ($67,962) from the Agricultural Experiment Station Earmarked Revenue Fund for the Biennium Ending June 30, 1975, for the Acquisition of Real Property; Appropriating As Much As May Be Necessary from the Agricultural Experiment Station Earmarked Revenue Fund for Interest and Other Costs to the Purchaser for the Acquisition of Real Property; Authorizing the Agricultural Experiment Station to Enter into a Contract for Deed to Approximately 93.69 Acres of Land in Gallatin County; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Sixty-seven thousand nine hundred sixty-two dollars ($67,962) is appropriated from the agricultural experiment station earmarked revenue fund for the biennium ending June 30, 1975, for the acquisition of real property as provided in this act.

Section 2. In addition to the amount appropriated by section 1 of this act, as much as may be necessary for the payment of interest and other costs to the purchaser for the acquisition of real property as provided in this act is appropriated from the agricultural experiment station earmarked revenue fund for the biennium ending June 30, 1973.

Section 3. The agricultural experiment station is authorized to enter into a contract for deed to property in Gallatin County comprised of approximately 93.69 acres presently leased by Montana state university from Peter M. and Mabel B. Hansen under a lease agreement entered into March 1, 1968. The total purchase price of this property shall not exceed sixty-seven thousand nine hundred sixty-two dollars ($67,962).

Section 4. This act is effective on its passage and approval.

Approved: March 17, 1973.

SENATE BILL NO. 1

An Act Appropriating Money for the Operation of the Forty-Third Legislative Assembly; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. One million dollars ($1,000,000) is appropriated from the general fund for the operation of the first regular session of the forty-third legislative assembly.

Section 2. This act is effective on its passage and approval.

Approved: January 6, 1973.

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SENATE BILL NO. 7

An Act to Appropriate Moneys to Various State Agencies for the Biennium Ending June 30, 1975; and Providing for Other Matters Relating to the Appropriations.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget bureau for executive branch agencies; approval by the chief justice of the supreme court for judicial branch agencies; and approval by the respective legislative committees for legislative branch agencies, to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative assembly but which have become available from a source other than state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. The appropriations in this act are intended to provide for all expenditures for:

(1) personal services;

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(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

(4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than general fund may be made available by approved budget amendment.

Section 5. Each executive branch agency shall submit to the budget bureau, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget bureau for review.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislative assembly in the 1975 biennial budget, unless the new program or the program expansion and its method of financing is approved by means of an approved budget amendment.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by means of an approved budget amendment.

Section 9. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and

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this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal funds is restricted by federal provisions.

Section 10. The governor may reduce any appropriation by not more than fifteen per cent (15%) except appropriations for:

(1) payment of interest and retirement of the state debt;

(2) operation of the legislature;

(3) public schools;

(4) the judiciary; or

(5) salaries of public officers, during their term of office.

Section 11. In addition to the amounts specifically appropriated by this act, there is hereby appropriated to the legislative auditor for the legislative audit program that amount that state agency heads agree to provide for audits from their available non-general fund resources.

Section 12. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 13. The following moneys are appropriated for the biennium ending June 30, 1975:

	Fiscal Year Ending 6/30/74	Fiscal Year Ending 6/30/75
LEGISLATIVE BRANCH		
Environmental Quality Council		
From General Fund	110,000	120,000
From Fed. & Priv. Rev. Fund, Environmental Quality Council. All available funds are hereby appropriated.		
Legislative Auditor		
Audit & Examination Program		
From General Fund	335,337	361,305
Members of the legislative audit committee shall be reimbursed from the appropriation to the legislative auditor for their actual expenses incurred as a result of interim meetings, and paid		

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mileage and compensation as provided by law for interim standing committees.		
Comm. on Uniform State Laws		
From General Fund	3,950	3,950
Consumers Counsel		
From Earmarked Rev. Fund		
Consumers Counsel Account	80,000	80,000
JUDICIAL BRANCH		
County Attorneys		
Legal Services Program		
From General Fund	293,130	293,186
District Judges		
From General Fund	684,000	687,466
Law Library		
Central Operations Program		
From General Fund	38,360	38,640
Revised Codes of Montana		
From General Fund	45,000	45,000
Supreme Court		
Maintenance of Supreme Court		
From General Fund	272,899	281,705
Board & Commissions		
From General Fund	11,742	12,772
ELECTED OFFICIALS		
Auditor		
Management & Control Program		
From General Fund	267,374	327,745
From Revolving Fund		
Central Payroll Acct.	75,000	75,000
Administrative Support Program		
From General Fund	77,293	78,448
Ins. Reg. & Lic. Program		
From General Fund	164,772	168,873
Investment Reg. & Lic. Program		
From General Fund	40,863	38,569
Governor		
Executive Office Program		
From General Fund	257,600	265,500
Lieutenant Governor Program		
From General Fund	51,120	51,680
Mansion Maintenance Program		
From General Fund	42,720	44,120

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Fed.-St. Coordinator Program		
From General Fund	76,350	79,830
Govern. Operations Program		
From General Fund	34,457	35,933
From Fed. & Priv. Rev. Fund		
Gov. Operations Acct.	68,913	71,867
Drug Coordinator Program		
From General Fund	26,000	0
Secretary of State		
Records Management Program		
From General Fund	251,096	258,408
Superintendent of Public Instruction		
Gen. Admin. Program		
From General Fund	236,940	246,614
From General Fund	100,000	100,000
This appropriation shall be expended only if federal moneys for administrative costs are not received. If a portion of those federal funds are received, this appropriation will be reduced in proportion to the amount of federal funds received.		
From Fed. & Priv. Rev. Funds		
Pub. Instruction Acct.	218,852	225,906
From Revolving Fund		
Pub. Instruction Acct.	448,556	468,755
Finan. & Cen. Support for Schools		
Program		
From General Fund	272,609	285,216
From Fed. & Priv. Rev. Fund		
Pub. Instruction Acct.	63,292	65,600
From Revolving Fund		
School Lunch Acct.	116,186	124,544
Vocational & Occup. Skills Program		
From General Fund	156,823	164,936
From Fed. & Priv. Rev. Fund		
Donable Prop. Acct.	91,414	97,934
Pub. Instruction Acct.	385,925	408,171
Develop. of Basic Skills Program		
From General Fund	311,064	320,730
From Earmarked Rev. Fund		
Traffic Safety Ed. Acct.	26,164	27,624
From Fed. & Priv. Rev. Fund		
Pub. Instruction Acct.	1,050,931	1,117,186

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Traffic Ed. Mobile Sim. Acct.	17,443	18,415
From Revolving Fund		
Pub. Instruction Acct.	47,968	50,642
Research, Planning, Develop. & Evaluation Program		
From General Fund	38,407	41,561
From Fed. & Priv. Rev. Fund		
Pub Instruction Acct.	122,968	130,177

The following amounts are hereby appropriated to the revolving fund, public instruction account, for the years indicated.

	FY 74	FY 75
From General Fund	29,091	30,346
From Earmarked Rev. Fund		
Traffic Safety Acct.	9,930	10,388
From Fed. & Priv. Rev. Fund		
Pub. Instruction Acct.	438,431	458,628
Donable Prop. Acct.	8,937	9,349
From Revolving Fund		
School Lunch Acct.	7,448	7,791
From Earmarked Rev. Fund		
State Equalization Aid Acct.		
$25,000 to the School Lunch Acct. to cover the handling charges of commodities disbursed to school districts.		
State Treasurer		
Treasury Management Program		
From General Fund	111,348	118,154
Dept. of Law Enforcement & Public Safety		
Legal Services Program		
From General Fund	268,538	276,115
Escheated Estates Program		
From Earmarked Rev. Fund		
Escheated Estates Acct.	16,183	16,767
Patrol Operations Program		
From General Fund	354,113	312,397
From Earmarked Rev. Fund		
Highway Acct.	109,598	113,304
Driver Licensing Program		
From General Fund	654,818	691,081
From Earmarked Rev. Fund		
Highway Acct.	279,384	299,596
From Fed. & Priv. Rev. Fund		
Highway Patrol Acct.	51,000	61,000

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Field Services Program		
From General Fund	1,109,281	926,077
From Earmarked Rev. Fund		
Highway Acct.	1,779,903	1,959,532
From Fed. & Priv. Rev. Fund		
Highway Patrol Acct.	79,523	85,396
Commercial Veh. Reg. Program		
From Earmarked Rev. Fund		
Highway Acct.	300,426	287,789
Vehicle Reg. Program		
From Earmarked Rev. Fund		
Motor Vehicle Acct.	683,402	669,048
Identification Bureau Program		
From General Fund	35,085	36,657
Criminal Investigation Program		
From General Fund	98,176	104,349
Law Enforce. Teletypewriter Comm.		
Systems Program		
From General Fund	80,000	85,000
From Fed. & Priv. Rev. Fund		
Law Enforce. Teletype		
System Acct.	120,000	84,000
From Revolving Fund		
A.G.-Teletype System Acct.	60,000	70,000
Law Enforce. Academy Program		
From General Fund	15,000	20,000
From Fed. & Priv. Rev. Fund		
Law Enforce. Academy Acct.	164,986	169,401
Fire Marshal Program		
From General Fund	141,612	146,321
Dept. of Law Enforcement &		
Public Safety-Bd. of Crime Control		
Crime Control Comm. Program		
From General Fund	80,000	80,000
From Fed. & Priv. Rev. Fund		
Crime Control Comm. Acct.	438,345	454,772
Gov.'s Juvenile Del. Acct.	46,863	49,139
Bur. Criminal Stat. Acct.	45,627	46,994
Indian Careers Acct.	24,679	25,558
Action Program		
From General Fund	100,000	100,000
Public Service Regulation		
Pub. Serv. Reg. Program		
From General Fund	384,779	397,955

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From Fed. & Priv. Rev. Fund Natural Gas Safety Acct.	11,500	12,000
Department of Revenue		
From the General Fund for enforcement of the provisions of S.B. 413	50,000	50,000

Approved: April 2, 1973.

SENATE BILL NO. 51

An Act to Appropriate Moneys to Various State Agencies for the Biennium Ending June 30, 1975; and Providing for Other Matters Relating to the Appropiations.

Be it enacted by the Legislative Assembly of the State of Montana

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget bureau to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative assembly but which have become available from a source other than state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be ex-

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pended during the second fiscal year by approved budget amendment.

Section 3. The appropriations in this act are intended to provide for all expenditures for:

(1) personal services;

(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

(4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than general fund may be made available by approved budget amendment.

Section 5. Each agency shall submit to the budget bureau, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget bureau for review.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislative assembly in the 1975 biennial budget, unless the new program or the program expansion and its method of financing is approved by the governor, or his designated representative after presentation through the budget bureau.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

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(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget bureau.

Section 9. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal funds is restricted by federal provisions.

Section 10. The governor may reduce any appropriation by not more than fifteen per cent (15%) except appropriations for:

(1) payment of interest and retirement of the state debt;

(2) operation of the legislature;

(3) public schools;

(4) the judiciary; or

(5) salaries of public officers, during their term of office.

Section 11. In addition to the amounts specifically appropriated by this act, there is hereby appropriated to the Montana university system units all funds which are properly expendable in the current operation of the system.

Section 12. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 13. The following moneys are appropriated for the biennium ending June 30, 1975:

	Fiscal Year Ending *6/30/74*	Fiscal Year Ending *6/30/75*
DEPARTMENT OF INSTITUTIONS		
Department Operations Program		
From General Fund	18,552	49,388
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	125,000	100,000
Reimbursement Program		
From General Fund	19,620	73,156
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	150,000	100,000
Board Program		
From General Fund	1,665	1,615

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From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	2,380	2,430
Aftercare Program		
From General Fund	386,624	482,183
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	85,000	47,000
Dept. Institutions Acct.	25,000	25,000
Community Based Services Program		
From General Fund	6,465	5,415
BOULDER RIVER SCHOOL & HOSPITAL		
Administration Program		
From General Fund	139,701	129,254
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	100,000	125,000
Gen. Serv. & Physical Plant Program		
From General Fund	1,133,284	1,136,625
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	200,000	250,000
Clinical Services Program		
From General Fund	267,441	259,656
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	100,000	125,000
Nursing Services Program		
From General Fund	1,684,060	1,778,247
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	200,000	250,000
Canteen Program		
From General Fund	5,050	5,628
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	2,000	2,000
From Revolving Fund		
Boulder River Canteen Acct.	20,000	20,000
Mental Retardation Div. Program		
From General Fund	149,000	199,000
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	1,000	1,000
Boulder Riv. School & Hosp. Acct.	450,000	600,000
Para-Medical Program		
From General Fund	268,297	291,229
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	53,000	49,000
CENTER FOR THE AGED		
Administration Program		
From General Fund	29,871	33,889

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From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	27,110	26,330
Care & Treatment Program		
From General Fund	51,139	96,136
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	100,000	65,000
Gen. Serv. & Physical Plant Program		
From General Fund	50,306	89,762
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	100,000	65,000
CHILDRENS CENTER		
Administration Program		
From General Fund	20,283	15,559
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	30,500	38,000
Counselling & Guidance Program		
From General Fund	112,634	213,893
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	250,000	175,000
Gen. Serv. & Physical Plant Program		
From General Fund	49,820	158,731
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	257,510	157,330
Education Program		
From General Fund	67,799	74,321
From Fed. & Priv. Rev. Fund		
Childrens Center Acct.	37,302	37,302

No part of this appropriation may be spent for custodial services rendered by the Montana Children's Center for Children other than dependent and neglected children within the definition of section 10-501. This restriction does not apply to children committed to the institution prior to July 1, 1973.

EASTMONT TRAINING CENTER		
Administration Program		
From General Fund	6,079	22,704
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	25,000	10,000
Care & Custody Program		
From General Fund	12,203	30,796
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	70,000	60,000
Eastmont Train. Center Acct.	2,485	0
Gen. Serv. & Physical Plant Program		
From General Fund	6,107	15,786

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From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	29,000	20,000
Ed. & Rehab. Program		
From General Fund	57,806	77,271
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	16,310	6,580
Eastmont Train. Center Acct.	5,156	0
BOARD OF EUGENICS		
Administration Program		
From General Fund	1,000	1,000
GALEN STATE HOSPITAL		
Administration Program		
From General Fund	111,598	113,006
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	32,340	35,920
Care & Treatment Program		
From General Fund	379,002	669,866
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	700,000	475,000
Gen. Serv. & Physical Plant Program		
From General Fund	279,176	561,328
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	700,000	475,000
MOUNTAIN VIEW SCHOOL		
Administration Program		
From General Fund	14,988	29,002
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	51,000	40,000
Care & Custody Program		
From General Fund	66,410	158,666
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	200,000	125,000
Ed. & Training Program		
From General Fund	90,588	95,647
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	10,360	8,740
Gen. Serv. & Physical Plant Program		
From General Fund	44,912	78,730
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	100,000	75,000
BOARD OF PARDONS		
Adult Probation & Parole Program		
From General Fund	295,815	292,133

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From Fed. & Priv. Rev. Fund		
Board of Pardons Acct.	135,686	0

If funding from the federal and private revenue fund is not available for the above program the following monies are appropriated for the hiring and support of six (6) additional parole officers.

From General Fund	73,935	72,431
PINE HILLS SCHOOL		
Administration Program		
From General Fund	26,917	66,532
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	75,000	41,000
Care & Custody Program		
From General Fund	46,759	146,900
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	275,000	200,000
Pine Hills School Interest & Income Acct.	25,000	25,000
Gen. Serv. & Physical Plant Program		
From General Fund	29,227	114,810
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	275,000	200,000
Pine Hills School Interest & Income Acct.	15,000	15,000
Ed. & Training Program		
From General Fund	230,452	241,828
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	6,070	6,490
Pine Hills School Acct.	36,000	38,000
Farm Program		
From General Fund	22,940	28,492
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	28,000	25,000
Clinical Services Program		
From General Fund	44,920	101,167
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	100,000	50,000
Pine Hills School Acct.	15,000	16,500
MONTANA STATE PRISON		
Administration Program		
From General Fund	69,856	78,663
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	100,000	100,000
Care & Custody Program		
From General Fund	693,980	1,147,268

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From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	695,000	325,000
Prison Acct.	21,200	21,200
Gen. Serv. & Physical Plant Program		
From General Fund	151,895	172,294
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	500,000	500,000
Education Program		
From General Fund	19,329	31,987
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	35,000	25,000
Ranch & Dairy Program		
From General Fund	129,431	273,865
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	280,000	150,000
Bureau of Identification Program		
From General Fund	16,315	12,977
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	11,100	15,850
Plate Manufacture Program		
From Earmarked Rev. Fund		
Motor Vehicle Acct.	595,537	39,463
Inmate Training Program		
From General Fund	104,088	107,890

If federal funds are received general funds are to be reduced to that extent.

SWAN RIVER YOUTH FOREST CAMP

Administration Program		
From General Fund	1,847	14,207
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	50,000	40,000
Counselling & Supervision Program		
From General Fund	35,138	75,529
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	36,000	3,000
Swan River Youth Camp Acct.	44,000	44,000
Ed. & Training Program		
From General Fund	12,571	12,806
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	1,280	1,490
Swan River Youth Camp Acct.	9,000	9,000
Gen. Serv. & Physical Plant Program		
From General Fund	6,862	7,907

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From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	50,000	50,000
VETERANS HOME		
Administration Program		
From General Fund	13,207	19,851
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	22,040	17,120
Care & Services Program		
From General Fund	70,567	112,992
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	70,000	40,000
Soldiers Home Acct.	80,000	80,000
Nursing Care Program		
From General Fund	71,019	69,244
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	20,000	20,000
Soldiers Home Acct.	30,000	70,000
WARM SPRINGS STATE HOSPITAL		
Administration Program		
From General Fund	89,654	103,320
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct	200,000	200,000
Care & Treatment Program		
From General Fund	1,649,154	3,264,117
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	2,905,000	1,600,000
Gen. Serv. & Physical Plant Program		
From General Fund	748,064	818,051
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	1,200,000	1,200,000
Community Ment. Health Serv. Program		
From General Fund	649,887	673,203
From Fed. & Priv. Rev. Fund		
Mental Hygiene Acct.	83,200	83,200

Forty per cent (40%) of any fees received for the treatment of patients under the above program shall be deposited with the state treasurer into the General Fund. The remaining sixty per cent (60%) shall be retained by the Regional Board. In addition to the above there is hereby appropriated from the Federal and Private Revenue Fund, Mental Hygiene Account, for the Community Mental Health Centers Programs, such funds that are available or become available to this program.

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Canteen & Recreation Hall Program		
From Revolving Fund		
Warm Springs Rec. Acct.	154,207	158,886
Alcoholic Treatment Program		
From General Fund	31,143	92,596
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	75,000	20,000
Drug Treatment Program		
From General Fund	64,106	55,687
From Fed. & Priv. Rev. Fund		
Fed. Rev. Sharing Acct.	23,000	10,720
Mental Hygiene Acct.	703,543	692,394
Commissary Program		
From General Fund	13,500	0
From Revolving Fund		
Warm Springs State Hospital Acct.	36,500	50,000

Approved: March 27, 1973.

SENATE BILL NO. 54

An Act to Appropriate Money for Capital Projects for the Biennium Ending June 30, 1975 and Providing for Other Matters Relating to the Appropriations.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, university system, board of institutions and other entities or instrumentalities of state government.

(2) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing and major repair projects authorized in this act.

(3) "Approved budget amendment" means approval by the director, department of administration, of a request submitted through the construction and maintenance division to:

(a) obtain financing for a new or expanded project from funds which were not available for consideration by the legislature, but which have become available; or

(b) transfer excess funds appropriated to a capital project

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within an agency to increase the appropriations of another capital project within that agency.

Section 2. No new capital project may be established and no existing capital project may be expanded beyond the scope of the project as approved by the legislature in the 1975 biennial budget unless the new capital project or the capital project expansion is authorized by an approved budget amendment.

Section 3. If a capital project is jointly financed by an appropriation or appropriations from state sources as well as by appropriations from other sources, the funds provided by appropriation from state sources shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget; provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded project approved by the director, department of administration, upon request submitted to him through the construction and maintenance division.

Section 4. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by an appropriation from state funds, the federal funds shall be deposited into the state fund from which the disbursements were originally made, unless usage of the federal funds is restricted by federal provisions.

Section 5. Notwithstanding any other provisions of law, the remaining balances on capital projects authorized by the legislature are hereby reappropriated until June 30, 1975, for the purposes for which originally appropriated.

Section 6. Notwithstanding any other provisions of law, the following money is appropriated from the funds received from the United States treasury under the provisions of the federal State and Local Assistance Act of 1972 to the director, department of administration, for the biennium ending June 30, 1975, for the indicated capital projects authorized by the forty-second legislative assembly which were deferred due to lack of federal and state funding:

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	Federal Revenue Sharing Acct., Federal & Private Rev. Fund
EXECUTIVE BRANCH	
SUPT. OF PUBLIC INSTRUCTION	
Construct Vo-Tech Center, Great Falls	1,000,000
DEPT. OF ADMINISTRATION	
Land Acquisition for capitol complex, subject to the approval of the capitol building and planning committee	150,000
Renovate old board of health building	30,000
Renovate governor's mansion	20,000
DEPT. OF EDUCATION	
EASTERN MONTANA COLLEGE	
Renovate, develop, pre-plan and acquire land	100,000
MONTANA STATE UNIVERSITY	
Remodel and renovate buildings	120,000
UNIVERSITY OF MONTANA	
Complete and renovate clinical service and art annex	150,000
Renovate and update miscellaneous projects	75,000
WESTERN MONTANA COLLEGE	
Develop, renovate and improve miscellaneous projects	40,000
DEPT. OF INSTITUTIONS	
STATE PRISON	
Construct new prison	3,800,000
WARM SPRINGS STATE HOSPITAL	
Renovate Mussigbrod building	350,000
DEPT. OF LAW ENFORCEMENT AND PUBLIC SAFETY	
HIGHWAY PATROL BUREAU	
Construct division headquarters at Glendive	105,375

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Section 7. The authorization for projects from previous legislatures herein listed are repealed with the monies to revert to the funds from which they were appropriated:

From the 41st legislature:

MOUNTAIN VIEW SCHOOL	
New academic facility	300,000
Addition to intensive treatment unit	85,000
DEPT. OF ADMINISTRATION	
Purchase of highway comm. land & bldg., capitol complex	1,500,000

From the 42nd legislature:

DEPT. OF FISH & GAME	
Construct office, lab. & storage-Dist. 1 headquarters	50,000

Section 8. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional or void, such decision shall not affect the validity of the remaining portions of this act.

Section 9. The following money is appropriated from indicated accounts and funds to the director, department of administration, for the biennium ending June 30, 1975, for the indicated capital projects:

	Long Range Bldg. Program Acct., Bond Proceeds & Insurance Clearance Fund	Construction Grant Acct., Federal & Private Rev. Fund
EXECUTIVE BRANCH		
SUPT. OF PUBLIC INSTRUCTION		
Construct vo-tech center, Great Falls	1,000,000	
Renovate and enlarge vo-tech facility, Helena airport	800,000	
Acquire site and develop plans for vo-tech center, Billings	100,000	
Develop plans, site acquisition and improvements for vo-tech center, Butte	100,000	

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DEPT. OF ADMINISTRATION		
Provide misc. maintenance, renovatons & land acquisition from capital bldg. acct.		200,000
remodel and add to the Mitchell building	1,777,000	
DEPT. OF EDUCATION		
DEAF AND BLIND SCHOOL		
Renovate dormitory, phase II	100,000	
EASTERN MONTANA COLLEGE		
Renovation, site develop., pre-planning & misc. projects and land acquisition	380,000	
pre-planning science bldg.	30,000	
MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY		
Provide gen. campus improve.	330,000	
pre-planning library	30,000	
MONTANA STATE UNIVERSITY		
Install fire protection projects	100,000	
Improve & expand central utilities	124,000	
Construct feed mixing plant	111,835	
NORTHERN MONTANA COLLEGE		
Renovate auto mechanics & metal tech bldgs, and provide misc. maint.	39,000	
Provide curbs, sidewalks, paving, storm drainage & gen. grounds improvements	50,000	
UNIVERSITY OF MONTANA		
Major maintenance & renovation projects	350,000	
Renovate old library	1,500,000	
WESTERN MONTANA COLLEGE		
Provide gen. campus improvements & fire protection projects	50,000	
DEPT. OF FISH & GAME		
Acquire, develop, & improve misc. state land based parks	200,000	200,000
Develop Giant Springs state park	60,000	84,000

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(No moneys may be paid pursuant to this act until the sum of twenty-four thousand dollars ($24,000) has been received by the state treasurer from local donations for the purpose of developing Giant Springs state park.)	
DEPT. OF INSTITUTIONS	
CENTRAL OFFICE	
Repair eight water towers	40,000
BOULDER RIVER SCHOOL AND HOSPITAL	
Renovate hospital, phase II	235,000
Renovate cottages	175,000
Renovate laundry	75,000
CENTER FOR THE AGED	
Construct garage & pave road & parking lot	10,000
EASTMONT TRAINING CENTER	
Construct multi-purpose bldg.	200,000
GALEN STATE HOSPITAL	
Install fire protection projects	40,000
repair roof	25,000
MONTANA CHILDREN'S CENTER	
Repair & renovate three cottages	40,000
MONTANA VETERANS' HOME	
Construct retaining walls & renovate plumbing shop	7,500
supplement smoke and heat detection system	15,000
MOUNTAIN VIEW SCHOOL	
Renovate school	155,000
PINE HILLS SCHOOL	
Install campus fire alarm system & fire escapes	55,000
WARM SPRINGS STATE HOSPITAL	
Continue fire protection projects, phase II	80,000
Update facilities for medicare-medicade compliance	95,000
Replace sewer line, phase II	50,000
Remodel laundry	20,000
Repair gates, sewage lagoon	5,000

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Reroof nurses' home & unit 6667	42,300	
Connect buildings to central heating plants	65,000	
DEPT. OF MILITARY AFFAIRS		
Relocate forest service at Helena airport	27,500	
Repair armories at Sidney, Glendive & Miles City	7,200	
Install security systems at eight armories	3,200	9,600
DEPT. OF NATURAL RESOURCES AND CONSERVATION		
Build fire equip. develop. center-state forester, Missoula	80,000	

Section 10. The following money is appropriated from indicated accounts and funds to the director, department of administration, for the biennium ending June 30, 1975, for the indicated capital project:

	Long Range Bldg. Program Acct., Bond Proceeds & Insurance Clearance Fund	Warm Springs Hosp. Acct. Bond Proceeds & Insurance Clearance Fund
DEPT. OF INSTITUTIONS		
WARM SPRINGS STATE HOSPITAL		
Construct new patient dormitory building	643,000	100,000

Section 11. The following money is appropriated from indicated accounts and funds of various state agencies to the architecture and engineering construction advance account, revolving fund for the biennium ending June 30, 1975, for the following capital projects:

	Earmarked Rev. Fund	Federal & Private Rev. Fund
DEPT. OF FISH & GAME		
(1) From the fish & game acct.		
Fisheries Division:		
Restore lake & stream habitat	50,000	

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Develop additional water supply, Yellowstone River trout hatchery, Big Timber	10,000	
Install permanent finish siding on residences, Bluewater hatchery	5,000	
Develop Preston artesian hatchery	50,000	
Construct residence Bluewater hatchery	30,000	
Construct residence Big Springs hatchery	30,000	
Construct residence Jocko River hatchery	30,000	
Construct residence Washoe park hatchery	30,000	
Construct new hatchery bldg., Yellowstone hatchery	25,000	
Build two-stall garage, Yellowstone River hatchery	3,500	
Construct residence, Yellowstone River hatchery	30,000	
Game Management Division:		
Acquire and develop land	450,000	450,000
Construct fence, Bitterroot game range	625	1,875
Renovate buildings, Bitterroot game range	625	1,875
Improve Canyon Ferry public use facilities	4,750	14,250
Construct bridge and fence, Blacktail game range	1,900	5,700
Reconstruct fence, Fleecer game range	450	1,350
Construct boundary fence, Beartooth game range	2,300	6,800
Construct road, Beartooth game range	2,175	6,525
Fill old dump and construct new sanitary garbage disposal facility, Beartooth game range and Holter recreational area	600	1,800
Provide shelterbelt, Helena reservoir	700	2,100
Construct fence, Cooney game management area	450	1,350

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Construct road and parking area, Isaac homestead area	950	2,850
Centralized Services Division:		
Construct new office building at Helena	560,000	
Renovate office, region 7	4,400	
Blacktop Helena warehouse area	5,000	
Construct additional chain link fencing, Helena warehouse area	2,500	
Provide blacktop and landscaping in office building area of Helena warehouse area	19,723	
Construct chain link fence, district #2, Missoula	650	
Install cold storage room, district #2, Missoula	5,000	
Recreation and Parks Division:		
acquire and develop fishing access sites and areas for small game	500,000	500,000
Develop and construct roadside lakes for recreational purposes	100,000	100,000
Construct Headquarters shop and storage building, Dist. 1	50,000	
(2) From the state parks account		
Acquire and develop misc. waterbased state parks and recreation areas	100,000	100,000
Construct modern restrooms and change house, Whitefish Lake recreation area	25,000	25,000
Install water system, blacktop roads, landscape and provide additional facilities, Deadman's Basin recreation area	32,500	32,500
Provide complete new campground facilities, Clark Canyon recreation area	50,000	50,000
Improve and expand campground facilities, Canyon Ferry recreation area	35,000	35,000
Construct modern restrooms, interior roads and parking areas, Big Arm state recreation area	32,500	32,500

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Install additional camp loops, marina facilities and traffic control devices, Cooney State recreation area	50,000	50,000
Construct new sanitary facilities, blacktop road and parking area and install interpretative program, Missouri River headwaters state monument	10,000	10,000
DEPARTMENT OF HIGHWAYS:		
(1) From the highway account		
Construct minor alterations and additions, statewide	60,000	
Construct sandhouse, St. Regis	18,150	
Reroof division office, Kalispell	7,500	
Construct equipment garage, MacDonald Pass	52,000	
Construct tool and sign building MacDonald Pass	4,000	
Construct sandhouse, MacDonald Pass	10,000	
Construct sandhouse, Bozeman Hill	12,100	
Construct equipment garage, Dutton	19,550	
Renovate and construct office addition, Havre	49,250	
Construct equipment garage, Glendive	38,000	
Construct equipment garage, Flaxville-Scobey	24,900	
Construct combination building, Billings	40,000	
Construct sandhouse, Beaverslide	10,000	
Construct addition to equipment garage, White Sulphur	20,400	
Remodel offices and repaint old building exterior, Helena	15,000	
Construct sandhouse, Philipsburg	13,200	
Construct addition to soils laboratory, Kalispell	7,700	
Construct equipment garage, Big Timber	23,200	
Construct sandhouse, Rodgers Pass	15,000	
Construct sandhouse, Harlem	10,000	
Construct equipment garage, Ekalaka	22,350	
Construct equipment garage, Malta	31,840	
Renovate sewer, Billings	2,500	
Construct sandhouse, Broadus	15,000	
Construct addition to equipment garage, Winnett	15,600	
Construct weigh station, Culbertson	125,000	

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Construct tool and sign building, Miles City	5,500
Construct security fence, Billings	5,200
Construct sandhouse, Plentywood	10,000
Construct trailer pad, Flowing Wells	5,000
Construct tool and sign building, Cut Bank	3,550
Construct sandhouse, Lincoln	15,000
Construct concrete floor in garage, Duck Creek	5,000
Construct tool and sign building, Lakeside	2,800
Construct sandhouse, MacDonald Pass-East	10,000
Construct equipment garage, Hamilton	26,200
Construct sandhouse, Lolo	10,000
Construct tool and sign building Hot Springs	2,800
Ventilate materials laboratory building, Butte	2,000
Construct sign and tool storage building, Sun River	4,225
Construct equipment garage, Browning	29,000
Construct trailer pad, Ekalaka	5,000
Construct equipment garage, Saco	15,000
Repair shop roof, Billings	8,000
Construct tool and sign building, Hillside	2,500
Construct tool and sign building, Beaverslide	2,500
Construct tool and sign building, Fort Benton	4,225
Ventilate steam room, Butte	2,000
Construct tool and sign building, Nyack	2,800
Construct sandhouse, Alberton	16,500
Construct sandhouse, Missoula	16,500
Construct sandhouse, Deer Lodge	10,000
Construct tool and sign building, Wolf Creek	4,225
Construct weigh station, Bonner	125,000
Construct equipment garage, Wolf Point	24,100
Construct tool and sign building, Fiddleback	2,500
Construct tool and sign building, Cascade	4,225
Construct new equipment garage and move existing building, Summit	62,400

DEPARTMENT OF INTERGOVERNMENTAL RELATIONS:		
(1) From the aeronautics division account		
Provide miscellaneous construction items necessary for federal "Airport Certification," West Yellowstone airport	65,000	73,000
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION:		
(1) From the Natural Resources and Conservation Account		
Construct Trailer House Pad		4,000
Extend Nursery Sprinkler System	5,000	5,000
DEPARTMENT OF EDUCATION		
Montana State University:		
(1) From the Agriculture Experiment Station and the Cooperative Extension Service Income Account		
Construct Head House Addition	28,965	11,035

Section 12. The department of administration, as state purchasing agent, shall have the authority, as part of the long range building program, to enter into a rental contract which provides an option to purchase a new office building for the department of social and rehabilitation services at Helena. The contract shall be in accordance with the provisions under section 82-1918, as amended, and the total project shall not exceed the scope of the original $1,500,000 building proposed in the long range building program budget request.

Section 13. Monies appropriated in this act for post-secondary vocational-technical center planning, land acquisition or construction are to be administered as a grant to the school district in which the facility is to be located. With the concurrence of the state board of education, the department of administration shall negotiate a grant agreement with the school district with provisions for plan review, construction review and progress payments by the department of administration. Land acquisition and construction shall be contracted by the school district in accordance with the provisions of the grant agreement, and title to the land and facility shall remain in the name of the school district. The Great Falls and Billings school districts shall furnish an amount equal to that provided in this act for each project. In the event the school district is unable to match the entire amount, the state appropriation shall be reduced to match the funds that can be furnished by the school district.

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Section 14. The amount of $602,775 is appropriated from the general fund to the bond proceeds and insurance clearance fund, long-range building program account, to be transferred as required for capital projects.

Section 15. There is created a blue ribbon commission on state institutions. It shall consist of seven members to be appointed by the governor. The commission shall examine the short and long range needs of the state for all institutions, including youth care, health and penal facilities. Initial priority shall be given to the state penitentiary. The commission shall examine the social trends away from institutional care with a view toward determining the value of community oriented custodial care in Montana. The commission shall submit a comprehensive plan for development of the future institutional needs of the state based on the projected demands for institutional services within the state at the first regular session of the 44th legislative assembly. The commission is dissolved upon submission of that plan.

There is appropriated from the long range building program account in the bond proceeds and insurance clearance fund the sum of one hundred thousand dollars ($100,000) for the use of the commission in carrying out its prescribed duties.

Approved: March 27, 1973.

SENATE BILL NO. 167

An Act Appropriating Eight Thousand Six Hundred Twenty-One Dollars and Forty-Two Cents ($8,621.42) to the Treasurer of Treasure County to Rectify an Inadvertent Overpayment from the County to the State, and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is appropriated the total sum of eight thousand six hundred twenty-one and forty-two cents ($8,621.42) from the following funds:

General fund	$1,764.67
University millage bond fund	6,584.82
University building bond fund	2.21
Hospital bond (1955) fund	185.78
Training school bond fund	83.94

to the treasurer of Treasure County to rectify an inadvertent overpayment from the county to the state under section 16-1030 on A-104 forms over the period from October 31, 1967, through June 20, 1972. Such payment was approved by the board of examiners on November 22, 1972.

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Section 2. This act is effective on its passage and approval.

Approved: February 14, 1973.

SENATE BILL NO. 197

An Act to Appropriate Moneys for Support of the Public Schools for the Biennium Ending June 30, 1975; and Providing for other Matters Relating to the Appropriations.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Program" means a segment that includes a combination of planned efforts to provide a service.

(2) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget bureau to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative assembly but which have become available from a source other that the state's general fund; or

(b) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. Financing for new or expanded programs from sources other than the general fund may be made available by approved budget amendment.

Section 4. If any section, subsection, sentence, clause or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 5. The following moneys are appropriated for the biennium ending June 30, 1975:

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	Fiscal Year Ending 6/30/74	Fiscal Year Ending 6/30/75
SUPERINTENDENT OF PUBLIC INSTRUCTION		
Distribution of Public funds program		
From General Fund for		
School Lunch	246,270	338,625
Transportation Reimbursement	1,450,000	1,475,000
School Foundation	30,059,000	32,866,000
From Earmarked Revenue Fund		
Public School Equalization Aid Account	(All Funds Available)	
From Federal and Private Grant Clearance Fund		
Common School I and I Account	(All Funds Available)	

Approved: April 2, 1973.

SENATE BILL NO. 457

An Act to Appropriate Moneys to the Legislative Council for its Operation, for the Statutory Retrieval System Annual Update and for Legislative Use of the Statutory Retrieval System for the Biennium Ending June 30, 1975.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The following moneys are appropriated from the general fund for the biennium ending June 30, 1975:

LEGISLATIVE COUNCIL

(1)	For operation	$917,000
(2)	For statutory information and retrieval system annual update	48,000
(3)	For legislative use of the statutory information and retrieval system	2,500
	Total for Biennium	$967,500

Approved: April 2, 1973.

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SENATE BILL NO. 468

An Act to Appropriate from the General Fund to the Department of Health and Environmental Sciences, All Moneys Received Under House Bill No. 112, of the First Session of the Forty-Third Legislative Assembly of the State of Montana.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is appropriated from the general fund all revenue received under house bill no. 112 of the first session of the forty-third legislative assembly of the state of Montana to the department of health and environmental sciences for the purpose of paying the costs for the administration of the act and implementing its provisions, subject to the conditions and limitations contained in house bill no. 112.

Approved: April 2, 1973.

SENATE BILL NO. 472

An Act Appropriating Money for the Operation of the Forty-Third Legislative Assembly and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Three hundred thirty-five thousand dollars ($335,000) is appropriated from the general fund for the operation of the forty-third legislative assembly.

Section 2. This act is effective on its passage and approval.

Approved: March 20, 1973.

HOUSE JOINT RESOLUTION NO. 1

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting the Federal Government to Reimburse All States for Old-Age Assistance, Aid to Dependent Children and Needy Blind, Aid to the Permanently Disabled and Medical Assistance Payments for Indians Who Reside on Reservations or on Allotted or Trust Lands.

WHEREAS, a subcommittee of the legislative council studied programs of the department of public welfare to determine if improvements could be made to provide better services to the persons served by these programs, and

WHEREAS, the federal government has reimbursed certain states for expenditures for old-age assistance, aid to dependent

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children and aid to the needy blind for Navajo and Hopi Indians residing on reservations, and

WHEREAS, the federal government does not reimburse payments made by the states for welfare benefits to Indians, other than Hopi and Navajo, residing on reservations within those states, and

WHEREAS, if reimbursements were made to the state of Montana for benefits paid to Indians living on reservations, that money could be used to increase the funding available through the Montana welfare program, and

WHEREAS, Senate Bill No. 2265, of the 92nd Congress would have provided for such reimbursement, and

WHEREAS, the legislative council recommends that legislation comparable to Senate Bill No. 2265 of the 92nd Congress be passed to end the discrimination that allows reimbursements for Indians in certain states and not in others.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States be requested to enact legislation comparable to Senate Bill No. 2265 of the 92nd Congress to permit reimbursement to states for payments made for old-age assistance, aid to dependent children, aid to needy blind, aid to permanently and totally disabled Indians and medical assistance for Indians who reside on reservations or on allotted or trust lands.

Approved: March 19, 1973.

HOUSE JOINT RESOLUTION NO. 2

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting that all Credits Granted by Units of the Montana University System Be Fully and Equally Transferable Among the Several Units.

WHEREAS, section 75-8501, R.C.M. 1947, states that the Montana university system shall be considered for all purposes one university, and

WHEREAS, it is the desire of the legislature that the university system be operated with maximum economy and efficiency and minimum duplication of services.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That all credits for courses at the several units of the Montana university system be fully and equally transferable among the severable units of the system, and

BE IT FURTHER RESOLVED, that any credit at a community college within the state for any course which meets the standards of college accreditation shall be transferable among each other and among all units of the university system, and

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent by the secretary of state to the regents of the Montana university system and to the executive secretary of the Montana university system.

Approved: March 6, 1973.

HOUSE JOINT RESOLUTION NO. 3

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Directing the Bills and Journal Committees of the Senate and House of Representatives to Meet as a Joint Committee for the Purpose of Devising a New Format for the Journals of the Senate and House of Representatives.

WHEREAS, the present format of the Journals of the Senate and House of Representatives is clumsy, archaic and founded on outmoded tradition, and

WHEREAS, the present journal format requires excessive stenographic, typing, printing and mailing costs, and

WHEREAS, the recorded votes required by Section 11(2), article V, of the 1972 Montana Constitution will greatly increase the length of the journals, and

WHEREAS, significant savings can be affected by changing the format for recording votes, committee reports on bills, and communications.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the bills and journal committees of the Senate and House of Representatives meet as a joint committee for the purpose of devising a new format for the journals of the Senate and House of Representatives.

BE IT FURTHER RESOLVED, that the joint committee report to the Senate and House of Representatives with recommen-

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dations for a new journal format as soon as possible after the passage of this resolution.

Approved: February 8, 1973.

HOUSE JOINT RESOLUTION NO. 5

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Directing the Legislative Council to Study the Operations of the Water Resources Division of the Department of Natural Resources and Conservation.

WHEREAS, the Montana legislative council has conducted a study of the water resources board during the 1971-1972 interim, and

WHEREAS, the functions and duties of the water resources board were reorganized within the department of natural resources and conservation during fiscal 1971-1972, and

WHEREAS, issues were raised as a result of the legislative council study which could not be adequately resolved in light of the reorganization of the water resources board.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council study the operations and functions of the water resources division of the department of natural resources and conservation, and

BE IT FURTHER RESOLVED, that the legislative council use the services of the legislative auditor and the legislative audit committee in their investigation, and

BE IT FURTHER RESOLVED, that the study include a report on the extent to which each of the recommendations made by the legislative auditor and the legislative council in their respective 1971-1972 interim reports on the operation of the water resources board have been implemented within the organization of the department of natural resources and conservation, and

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the legislative auditor and the executive director of the legislative council.

Approved: March 15, 1973.

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HOUSE JOINT RESOLUTION NO. 9

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Directing the Environmental Quality Council to Undertake a Montana Land Use Policy and Legislation Study and Requesting the Governor to Appoint an Interdepartmental Advisory Committee.

WHEREAS, Montana has historically concerned itself with the development of its natural resources and the quality of its environment, and

WHEREAS, this concern, in the past, has been reflected by the development of policy and law with regard to the anticipated growth of Montana and the development of its resources, and

WHEREAS, Montana's growth and development has increased the complexity of person-to-person and person-to-environment interrelationships, and

WHEREAS, both the people and the environment of Montana must suffer the waste of these conflicts, and

WHEREAS, section 69-6514 (f), R.C.M. 1947, makes it the duty of the executive director and staff of the environmental quality council to make and furnish such studies, reports thereon and recommendations with respect to matters of policy and legislation as the legislative assembly requests.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the environmental quality council is hereby directed to undertake a thorough study of land use practices and policies in Montana and elsewhere in the United States, prepare a report and make recommendations with respect to such practices and policies, and prepare suggested legislation for the consideration of the governor and the 1975 legislature, and

BE IT FURTHER RESOLVED, that the governor is requested to appoint an interdisciplinary, interagency advisory committee to work with and advise the environmental quality council, and jointly propose recommendations to the governor and the legislature. The avowed purpose of this resolution is to obtain a comprehensive plan, together with suggested legislation, to insure an orderly development and expansion of Montana's natural resources without exploitation.

BE IT FURTHER RESOLVED, that the secretary of state

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send a copy of this resolution to the governor of the state of Montana.

Approved: March 7, 1973.

HOUSE JOINT RESOLUTION NO. 10

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Designating Miss Montana as an Honorary Hostess of the State of Montana.

WHEREAS, Miss Debbie DeBiase and all of her predecessors who have won the title of Miss Montana have represented the state of Montana with outstanding talent and have brought honor and grace to the state of Montana, and

WHEREAS, the title of Miss Montana attests to the exceptional charm and talent of the recipient of that title, and

WHEREAS, Miss Montana represents the state in many appearances across the state and nation and is often available to welcome and/or perform for conventions and public gatherings.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Miss Debbie DeBiase be officially designated by Governor Thomas L. Judge as honorary hostess of the state of Montana in her travels throughout the state and country, and

BE IT FURTHER RESOLVED, that the young women granted the title of Miss Montana in 1973 and 1974 will, from the commencement of their reigns, be officially designated honorary hostesses of the state of Montana, and

BE IT FURTHER RESOLVED, that the secretary of state send copies of this joint resolution to Miss DeBiase, the Miss Montana pageant, the Honorable Thomas L. Judge, governor of the state of Montana, and to the members of the Montana congressional delegation.

Approved: March 8, 1973.

HOUSE JOINT RESOLUTION NO. 12

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Respectfully Requesting that the U.S. Congress Take Action to Restore Funds for the Rural Environmental Assistance Program and the Water Bank Program.

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WHEREAS, the federal administration has ordered the U.S. department of agriculture's agricultural stabilization and conservation services administered and rural environmental assistance program and water bank program expenditures for 1973 halted as of December 22, 1972, and

WHEREAS, the curtailment of these funds will have a very serious adverse effect upon the rural, environmental, conservation, social and economic development of Montana, and the nation, and

WHEREAS, curtailment of these funds will have a very serious adverse effect in our seven Indian reservations on weed control and water development, and

WHEREAS, to Montana's agriculture, which produces thirty-three per cent (33%) of the state's income, these cost-share programs are vital for the protection of the natural resources for present and future generations, and

WHEREAS, during 1972 the federal input to the rural environmental assistance program was five million dollars ($5,000,000) which is matched by at least five million dollars ($5,000,000) farmer-rancher dollars and five hundred thousand dollars ($500,000) in technical and administrative services, the direct loss of this program would be ten million dollars ($10,000,000) annually, and

WHEREAS, the funds allocated to Montana and each state of the nation for the past thirty-six (36) years for rural environmental assistance represent a public investment of funds to share with private investments and services by farmers and ranchers to provide timely long-term mutual benefits in the conservation of soil, water and related resources, enhancement of wildlife habitat, recreation and esthetic values; control of pollution, erosion and sedimentation; and protection of the tax base and improvement of the natural beauty of the state. All of these benefits to society in general have been done in a proven efficient and democratic manner backed by proven research, education and technical assistance, with locally controlled and acceptable administration, and

WHEREAS, this is a recognized joint responsibility of society and farmers and ranchers who alone cannot always make these investments, and

WHEREAS, the cancellation of these two (2) programs would result in loss of income and employment to federal employees, contractors and suppliers who service the needs of these programs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND

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THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly of the state of Montana recognizes the necessity for rural environmental assistance, and therefore, respectfully requests Montana's delegation: Senators Mansfield and Metcalf, and Representatives Shoup and Melcher to initiate the necessary action in the U.S. Congress to insure funding for the purposes of rural environmental assistance, and

BE IT FURTHER RESOLVED, that the Montana secretary of state send a copy of this joint resolution to President Richard Nixon; Senator Mike Mansfield, U.S. Senate; Senator Lee Metcalf, U.S. Senate; Congressman John Melcher, U.S. House of Representatives; Congressman Richard Shoup, U.S. House of Representatives.

Approved: February 25, 1973.

HOUSE JOINT RESOLUTION NO. 14

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting that the Legislative Council Conduct a Study of the Laws Relating to Elections for Cities and Towns and to Report Its Findings and Recommendations Together with any Necessary Legislation to the Second Session of the 43rd Legislative Assembly.

WHEREAS, the general election laws of the state of Montana were revised by the 41st legislative assembly, and

WHEREAS, the revision of said election laws repealed many of the statutes pertaining to the conduct of city and town elections, and

WHEREAS, many sections of the revised election laws are confusing to the extent that they pertain to cities and towns and are subject to several interpretations, and

WHEREAS, the state laws relating to elections for cities and towns are not sufficient or completely lacking in providing uniform control over such elections, and

WHEREAS, there is a need for state laws creating a uniform procedure for city and town elections.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the legislative council is hereby requested to conduct a study of election laws pertaining to cities and towns and determine whether it would be feasible and desirable to adopt a uniform procedure for all city and town elections, and

BE IT FURTHER RESOLVED, that the legislative council is requested to submit a written report of its findings and recommendations together with any necessary implementing legislation for consideration by the second session of the 43rd legislative assembly.

Approved: March 15, 1973.

HOUSE JOINT RESOLUTION NO. 16

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Urging the United States Army Corps of Engineers to Give Maximum Consideration to the Maintenance of High-Quality Recreational Opportunities in the Development and Execution of its Operating Plan for Lake Koocanusa and that the Corps of Engineers Specify Exact Fluctuation Limits and Criteria in the Operating Plan.

WHEREAS, Libby Dam was constructed by the United States Army Corps of Engineers and was completed in 1972 thereby resulting in the formation of Lake Koocanusa, and

WHEREAS, the construction of Libby Dam and subsequent formulation of Lake Koocanusa is intended to provide multiple benefits including flood control, hydroelectric power and public recreation, and

WHEREAS, such potential recreational benefits must be weighed against the losses of a free-flowing river and fish and wildlife habitat, and

WHEREAS, the loss of such natural and recreational values should be compensated by insuring that Lake Koocanusa will provide valuable public recreational opportunities, and

WHEREAS, the Corps of Engineers is responsible for developing a plan for the operation of Libby Dam and Lake Koocanusa, and

WHEREAS, the operation of Libby Dam resulting in fluctuation of Lake Koocanusa may have a detrimental effect on public recreational use.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Senate and House of Representatives of the state of Montana urge the United States Army Corps of Engineers to give maximum consideration to the maintenance of high-quality recreational opportunities in the development and execution of its operating plan for Lake Koocanusa. Such consideration should include the maintenance of a constant and high lake level during normal periods of recreational use, and

BE IT FURTHER RESOLVED, that the Senate and House of Representatives urge the Corps of Engineers to specify in the operating plan the fluctuating limits of Lake Koocanusa, criteria for fluctuations, the time period when such fluctuations may occur, and procedures to insure that the annual fluctuation not be so extreme so as to preclude the establishment of a healthy fish population and recreational resource.

BE IT FURTHER RESOLVED, that the secretary of state send a copy of this resolution to the Corps of Engineers regional office and the Bonneville Power Administration.

Approved: March 15, 1973.

HOUSE JOINT RESOLUTION NO. 18

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting the Legislative Council to Conduct a Study to Determine on Acceptable Minimum Level of Services to Be Provided by County and City-County Health Departments, the Feasibility of Creating District Public Health Departments, and an Economical Means for Providing Public Health Services to the People of Montana.

WHEREAS, the people of Montana can benefit from equal access to public health services, and

WHEREAS, there is considerable difference in the kind, extent and level of service provided to Montanans, and

WHEREAS, the financial capabilities of the several counties for providing health services differ, and

WHEREAS, the natural boundaries for equitable delivery of public health services do not innately correspond to county and city.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council be requested to conduct a study to determine the minimum levels of service for county and city-county health departments; and

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BE IT FURTHER RESOLVED, that the legislative council with the assistance of the Montana department of health and environmental sciences are requested to conduct a study to determine the feasibility of creating district public health departments and requested to recommend the most economical means for accomplishing this task.

BE IT FURTHER RESOLVED, that the legislative council report back with its findings and proposed legislation to the 44th Legislature.

Approved: March 21, 1973.

HOUSE JOINT RESOLUTION NO. 21

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Urging that all Military Cemeteries be Administered by the Veterans' Administration and that the Custer Battlefield National Cemetery Be Granted More Land.

WHEREAS, military cemeteries throughout the United States are more logically related to veteran affairs than to national parks and monuments, and

WHEREAS, the Custer Battlefield National Cemetery is approaching the point at which land is not available for burials.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States be urged to enact legislation which will require all military cemeteries to be administered by the veterans' administration, and

BE IT FURTHER RESOLVED, that the Custer Battlefield National Cemetery acquire more land for burial purposes to keep it in operation, and

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent by the secretary of state to each member of Montana's congressional delegation, to the secretary of the interior, and to the director of the veterans' administration.

Approved: March 15, 1973.

HOUSE JOINT RESOLUTION NO. 22

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting the Legislative Council to

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Study the Funding and Operation of the Various Pension and Retirement Systems for Public Employees.

WHEREAS, the people of the state of Montana, through their legislature, have authorized the establishment of various pension and retirement systems for the purpose of providing those in public service with financial security in their later years, and

WHEREAS, this legislature has an obligation in trust to insure that said pension and retirement systems are so funded and operated that they will continue to be capable of providing the retirement benefits on which thousands of loyal and dedicated public servants rely, and

WHEREAS, this legislature is concerned that some of said pension and retirement systems may be in grave danger of being unable to meet their obligations.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is requested to conduct a thorough study of the funding, operations and current actuarial reports of the several state-administered retirement systems and the municipal police and firemen pension systems to determine whether the present funding and operation of said systems is adequate to guarantee that the obligations of said systems will continue to be met, and

BE IT FURTHER RESOLVED, that the legislative council be requested to utilize the services of the legislative auditor in this study, and

BE IT FURTHER RESOLVED, that the legislative council shall report its findings, conclusions and recommendations, together with any necessary legislation to the fourty-fourth legislative assembly, and

BE IT FURTHER RESOLVED, that the secretary of state send a copy of this resolution to the executive director of the legislative council.

Approved: March 15, 1973.

HOUSE JOINT RESOLUTION NO. 27

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Directing the President of the United States to Reinstate the Rural Electrification Act Two Per Cent (2%) Interest Direct Loan Program.

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WHEREAS, twenty-five (25) rural electric and ten (10) rural telephone cooperatives in Montana, which provide adequate and reasonable price service to over sixty-two thousand (62,000) ranchers, farmers, and other rural people in business, have made and continue to make an outstanding contribution to the social image and well-being of our state, and

WHEREAS, the extension and contribution of electricity and telephone service on an area coverage basis by these rural cooperatives have been made possible by long-term low-cost federal loans of the Rural Electrification Act of 1936, as amended, and

WHEREAS, the rural electric program is one of the most beneficial federal programs ever devised to help rural people help themselves, to achieve a high degree of economic efficiency and a better way of life, and

WHEREAS, the federal administration has abruptly terminated all Rural Electrification Act low-cost direct loans to rural electricity and telephone borrowers as of January 1, 1973, and substituted a system of insured and guaranteed loans at a significantly higher interest rate, and

WHEREAS, this action by the administration threatens the very survival of the Montana rural electricity and telephone cooperatives, who service only one and one-half (1½) consumer members per mile and cannot afford such increased interest costs without disastrous increase of retail rates to farmers, ranchers, and other rural consumers who can ill afford such increased rates.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly of the state of Montana petition the president of the United States to reinstate the Rural Electrification Act Two Per Cent (2%) Interest Direct Loan Program in accordance with the provisions of the Rural Electrification Act of 1936 and the Rural Telephone Act as amended and released for immediate lending the full dollar amount appropriated by the congress of the United States for the Rural Electrification Act Electricity and Telephone Loan Program in fiscal 1973.

Approved: March 5, 1973.

HOUSE JOINT RESOLUTION NO. 31

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Directing the Department of Fish and

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Game to Review Water Resource Projects to Determine Outdoor Recreational Potential Prior to Sale or Disposition of the Projects by the Department of Natural Resources and Conservation.

WHEREAS, the division of water resources of the department of natural resources and conservation has control of many public works projects located throughout the state which were constructed for the conservation, development, storage, distribution, and utilization of water, and

WHEREAS, the division of water resources of the department of natural resources and conservation is statutorily empowered to sell or otherwise dispose of these projects when the projects are no longer needed for the conservation, storage and utilization of water, and

WHEREAS, certain of these projects are no longer necessary for the conservation, storage or utilization of water, and

WHEREAS, the division of water resources of the department of natural resources and conservation has sold or otherwise disposed of a number of these projects, and

WHEREAS, certain of these projects are rich in outdoor recreational potential for hunting, fishing and numerous other outdoor activities, and

WHEREAS, the outdoor recreational areas of the state of Montana and related activities have always been, still are and always will be of vital concern to the people of this state, and

WHEREAS, the department of fish and game is designated as the state agency responsible for planning and developing outdoor recreational resources in this state, and

WHEREAS, the need for close cooperation and coordination between the department of fish and game and the division of water resources of the department of natural resources and conservation is obvious.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the department of fish and game is directed to review water resource projects to determine outdoor recreational potential prior to sale or disposition of the projects by the department of natural resources and conservation, and

BE IT FURTHER RESOLVED, that the department of fish and game and the department of natural resources continue and intensify their cooperative efforts to preserve outdoor recreational areas and activities within the state of Montana, and

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BE IT FURTHER RESOLVED, that the secretary of state is instructed to send copies of this resolution to the department of fish and game and the department of natural resources and conservation.

Approved: March 19, 1973.

HOUSE JOINT RESOLUTION NO. 32

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting the Legislative Council to Study the Office of State Treasurer.

WHEREAS, the 1972 Montana constitution deleted reference to the office of state treasurer, and

WHEREAS, there are no statutory provisions relating to the manner of selecting or to the term of office of the state treasurer, and

WHEREAS, Montana has had an elective state treasurer since 1889, and

WHEREAS, as Montana state government has become more modernized, many of the traditional functions of a state treasurer have been assumed by the department of administration, and

WHEREAS, before 1976 the legislature must decide whether to continue the office of state treasurer or to abolish it and transfer any remaining functions to a major department of state government, and

WHEREAS, before such decision is made the legislature should have available a detailed study of the office of state treasurer.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is requested to conduct a study of the office of state treasurer, including functions, duties and costs relating to the office. The study should attempt to determine if a cost savings would be realized by discontinuing the office and transferring the functions.

Approved: March 6, 1973.

HOUSE JOINT RESOLUTION NO. 34

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Directing the Legislative Council to

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Study the Results of the Oregon Bottle Act, the Washington Litter Act, Other State Acts, and Non-Governmental Entities on Litter Control, Solid Waste Disposal, Recycling, and Energy Conservation.

WHEREAS, considerable interest and debate has been generated regarding the possibility of legislatively controlling the amount of energy consumed and the amount of litter and solid waste generated by restricting the use of throwaway and disposable containers in the state of Montana, and

WHEREAS, the states of Oregon and Washington are leaders in this area of legislation and are currently gaining valuable experience in the effect and workability of legislation of this type, and

WHEREAS, the legislature desires to have a detailed analysis of the effects of legislation of this tpye at its disposal in order to make a judicious decision in future deliberations of the subject.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council be directed to conduct a study of the results of the Oregon Bottle Act, the Washington Litter Act, and other state acts and non-governmental entities with regard to:

(1) the impact on litter along the highways;

(2) the impact on distributors of the products affected;

(3) the impact on prices of the products affected;

(4) the impact on recycling of containers and disposable items in general, and

(5) the impact on energy conservation.

BE IT FURTHER RESOLVED, that such study include evaluation of the laws of other states which relate to litter control, solid waste disposal, and recycling of waste materials and evaluation of the experience of non-governmental entities in such areas, and that the legislative council report on the results of the study together with its recommendations to the first session of the 44th legislative assembly.

Approved: March 6, 1973.

HOUSE JOINT RESOLUTION NO. 37

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Urging Indian Public Health Services

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to Provide Medical Assistance to Off-Reservation Indians.

WHEREAS, the off-reservation Indian people have generally received no bureau of Indian affairs' support, and

WHEREAS, the federal statutes state the bureau of Indian affairs and Indian public health services shall be extended to "Indians," and

WHEREAS, federal courts have decided that bureau of Indian affairs' statutes direct aid to both on-reservation and off-reservation Indians, and

WHEREAS, Doctors Todd and Johnson, chief administrators for Indian public health, have stated that Indian public health statutes direct that agency to aid Indians—regardless of residency.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the house of representatives and senate urge the Indian public health services to provide medical assistance to off-reservation Indians.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to President Richard M. Nixon, Senators Mike Mansfield and Lee Metcalf, and Congressmen John Melcher and Richard Shoup, and the Bureau of Indian Affairs.

Approved: March 24, 1973.

SENATE JOINT RESOLUTION NO. 1

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting the Legislative Council to Conduct a Study of the Problems Involved in the 1972 Montana Constitution in Article II, Section 8, "Right of Participation", and Section 9, "Right to Know", Concerning the Various Fundamental Citizens' Rights Involved, and Report its Findings to the Second Session of the Forty-Third Legislative Assembly Together with Draft Legislation.

WHEREAS, the legislative assembly has the ultimate duty to implement the 1972 Montana constitution with well-researched and well-considered legislation, and

WHEREAS, research and drafting of legislation providing for fundamental citizens' rights concerning the new and expanding rights of participation and to know should be accomplished only

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after careful and considered reflection prior to its presentation for adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is requested to conduct a detailed study leading to draft legislation implementing article II, sections 8 and 9 of the 1972 Montana constitution.

BE IT FURTHER RESOLVED, that a report and draft legislation be prepared and submitted to the second session of the forty-third legislative assembly.

Approved: January 24, 1973.

SENATE JOINT RESOLUTION NO. 2

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting that the Legislative Council Conduct a Study of the Problems Involved in Article II, Section 18, "State Subject to Suit" of the 1972 Montana Constitution Concerning the Abolition of the Doctrine of Governmental Immunity, and Report its Findings to the Regular Session of the Forty-Third Legislative Assembly Together with Draft Legislation of a Procedure to Process Claims.

WHEREAS, the legislative assembly has the ultimate duty to implement the 1972 Montana constitution with well-researched and well-considered legislation, and

WHEREAS, research and drafting of legislation providing for a procedure for processing claims against the state, due to the constitutional abolition of the doctrine of governmental immunity, should be accomplished after careful and considered reflection prior to its presentation for adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is requested to conduct a detailed study leading to draft legislation providing for a procedure for processing claims against the state in coordination with the university of Montana law school, the Montana bar association, the Montana trial lawyers association, and any other interested groups preparatory to submitting a written report, together with any necessary implementing legislation.

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BE IT FURTHER RESOLVED, that the research should include a study of problems concerning, but not limited to:

(1) A procedure of administrative processing of claims prior to a right to sue in district court.

(2) A procedure for notice and a statute of limitations to preclude state claims.

(3) A procedure enabling state agencies to self-insure or to purchase insurance.

(4) A procedure for providing immunity from suit to governmental employees for acts committed within the scope of their employment.

BE IT FURTHER RESOLVED, that the report and draft legislation should be prepared and submitted to the regular session of the forty-third legislative assembly.

Approved: January 29, 1973.

SENATE JOINT RESOLUTION NO. 3

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Directing The Legislative Council to Conduct a Study on Qualifications, Training, Compensation and Number of Justices of the Peace.

WHEREAS, article VII, sections 5(1) and 5(2) of the 1972 Montana constitution states:

(1) "There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law . . .

(2) The legislature may provide for additional justices of the peace in each county."

WHEREAS, at present there is no study available showing how many justices of the peace are needed in each county, or the present status of their qualifications, and

WHEREAS, unless the legislature makes provisions for more than one justice of the peace in each county before the 1974 general elections, there will be only one justice of the peace allowed in each county, and

WHEREAS, the effective administration of justice within the state of Montana through the justice of the peace courts may require more than one justice of the peace per county, and

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WHEREAS, in order to properly provide for the qualifications, training and compensation of justices of the peace the legislature must be informed.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council study:

(1) the workload of present justices of the peace;

(2) the workload justices of the peace can effectively administer;

(3) geographical areas that the justice courts must cover;

(4) present court room and other facilities available;

(5) qualifications and training required in other states;

(6) compensation in other states;

(7) money available to adequately compensate justices of the peace in Montana.

The council shall determine from these considerations the number of justices of the peace needed in each county and the qualifications, training and compensation recommended.

BE IT FURTHER RESOLVED, that the legislative council report its findings in writing, together with recommendations and any implementing legislation necessary, to the second session of the forty-third legislative assembly.

Approved: January 30, 1973.

SENATE JOINT RESOLUTION NO. 4

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting the Legislative Council to Conduct a Study of the Problems Involved in Article II, Section 15, "Rights of Persons Not Adults" of the 1972 Montana Constitution Concerning the Rights of Persons Under Eighteen (18) Years of Age, and Report its Findings to the Second Session of the Forty-Third Legislative Assembly Together with Draft Legislation.

WHEREAS, the legislative assembly has the ultimate duty to implement the 1972 Montana constitution with well-researched and well-considered legislation, and

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WHEREAS, research and drafting of legislation providing for certain new fundaments of rights of Montana's youth should be accomplished only after careful and considered reflection prior to its presentation for adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is required to conduct a detailed study leading to draft legislation implementing article II, section 15, of the 1972 Montana constitution.

BE IT FURTHER RESOLVED, that a report and draft legislation should be prepared and submitted to the second session of the forty-third legislative assembly.

Approved: January 29, 1973.

SENATE JOINT RESOLUTION NO. 5

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting the United States Department of Agriculture to Treat Montana's Winter Allowance as an Income Disregard Rather than an Addition to Income.

WHEREAS, a subcommittee of the legislative council studied programs of the department of public welfare to determine if improvements could be made to provide better services to the persons served by these programs, and

WHEREAS, the subcommittee determined that welfare recipients lose part of their food stamp bonus during the winter months as a result of the department of agriculture's treatment of Montana's winter allowance as an addition to income rather than as an income disregard, and

WHEREAS, the state department of social and rehabilitation services has on numerous occasions requested the department of agriculture to correct the situation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States department of agriculture treat Montana's present winter allowance as an income disregard rather than as an addition to income for the purpose of allowing Montana wel-

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fare recipients to receive food stamp bonuses during the winter months.

Approved: February 8, 1973.

SENATE JOINT RESOLUTION NO. 8

A Joint Resolution of the Senate and the House of Representatives of the State of Montana To Improve Administration of Farm Programs Urging the Montana Agricultural Stabilization and Conservation State Committee to Adopt Immediately the Emergency Measures Now Known by the Agricultural Research Service, Soil Conservation Service, Federal Extension Service, Experiment Stations and Other Agencies to Reduce Montana's Conserving Base, To Minimize Summer Fallowing to Maximize Cropping Flexibility, and to Prevent Further Destruction of Montana's Cropland and Further Pollution of Montana's Water by Saline-Alkali Seep, In Accordance With The Principles of Conservation of Natural Resources in Soil and Water As Set Out in the Soil Conservation and Domestic Allotment Act, As Amended.

WHEREAS, the Montana USDA committee for rural development and soil conservation service soil scientists reported eighty one thousand four hundred thirty (81,430) acres of saline seep in twenty-five (25) Montana counties in March 1971; and

WHEREAS, later surveys have disclosed far greater saline damage in some counties than was reported in 1971; and

WHEREAS, the USDA state committee for rural development in its December 31, 1971, Montana situation statement recognized increasing saline destruction of Montana's cropland and increasing saline pollution of Montana's water; and

WHEREAS, the USDA Montana committee for rural development, based on geologic conditions, estimated there are eight million (8,000,000) acres of potential saline seep areas in Montana; and

WHEREAS, preliminary research by agricultural research service, Montana agricultural experiment stations and Highwood alkali control district shows that summer fallowing causes spreading of saline-alkali destruction; and

WHEREAS, preliminary research by the same agencies shows that intensive rotational cropping of small grains, judicious use of grasses, snow catch and fertilizers in a completely flexible cropping pattern will arrest or reduce saline-alkali seep; and

WHEREAS, Montana's high conserving base prohibits reduc-

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tion of summer fallowing, flexible cropping and intensive rotational cropping of small grains; and

WHEREAS, saline-alkali seeps and recharge sites override property and geo-political boundaries requiring treatment on an area, not single farm, basis; and

WHEREAS, the Montana agricultural stabilization and conservation state committee has authority through county agricultural stabilization and conservation committees to cause immediate downward adjustments in conserving base to provide cropping flexibility required for prevention of further saline-alkali destruction of Montana's soil and water resources.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana agricultural stabilization and conservation state committee act immediately and aggressively to apprise all stockmen and farmers of soil destruction and water pollution caused by saline-alkali seep under present farming practices, to encourage all individual operators to request immediate sharp downward adjustment of their conserving base acreages and to educate and encourage all individual operators to adopt intensive rotational cropping of small grains and judicious use of grasses and fertilizers recommended as emergency measures by agricultural research service, Montana agricultural experiment stations, Highwood alkali control district and other agencies to prevent further destruction by saline-alkali seep and

BE IT FURTHER RESOLVED, the secretary of state send copies of this resolution to Secretary Earl M. Butz of the United States department of agriculture; each member of the Montana congressional delegation in Washington, D.C.; each member of the Montana agricultural stabilization and conservation state committee; the executive director of Montana agricultural stabilization and conservation service; the Honorable Thomas L. Judge, governor of the state of Montana; Secretary Rogers C. B. Morton of the United States department of the interior; Secretary George P. Schultz of the United States treasury; Comptroller General Elmer Staats of the United States general accounting office; Director Roy Ash of the United States office of management and budget; the Honorable J. L. Whitten of the United States House of Representatives; and each county ASC committee.

Approved: March 17, 1973.

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SENATE JOINT RESOLUTION NO. 9

A Joint Resolution of the Senate and the House of Representatives of the State of Montana to Improve Administration of Farm Programs Urging the Montana Agricultural Stabilization and Conservation State Committee to Effect Close Coordination with Cooperative Extension Service, soil Conservation Service, Agricultural Experiment Stations and Montana State University at State and County Levels and to Effect Immediate, Sharp, Downward Adjustments in Montana's Conserving Base Acres to Provide a Reliable Feed Supply at Stable Cost for Montana's Livestock and Feeding Industries to Improve the Statewide Economy and to Correct Wastage of Montana's Natural Resources in Soil and Water by Erosion and Saline Seep.

WHEREAS, Montana's high conserving base, recorded in 1971 as 5,786,275 acres, or forty per cent (40%) of cropland, curtails production of feed grains in Montana; and

WHEREAS, restriction of feed grain production has caused unreliable feed supply, fluctuating costs and undue financing, feed procurement and import problems that seriously weaken Montana's livestock and feeding industries; and

WHEREAS, reduction of Montana's conserving base acres from 5,786,275 or forty per cent (40%) of cropland to 2,893,774 or twenty per cent (20%) could free 2,892,501 acres for additional feed grain production; and

WHEREAS, this additional production could provide reliable feed supply of 101,237,535 more bushels of barley at stable cost; and

WHEREAS, at the rate of one dollar ($1) per bushel, this additional production could increase Montana's gross income one hundred one million dollars ($101,000,000) each year; and

WHEREAS, increased feed grain production and correction of erosion and saline seep are prohibited by enforced summer fallow and cropping practices resulting from Montana's high conserving base; and

WHEREAS, present 50-50 or 1/3-2/3 cropping practices in Montana have contributed largely to present and increasing destruction of natural resources in soil and water by erosion and saline seep in violation of the Soil Conservation and Domestic Allotment Act, as amended; and

WHEREAS, pollution of Montana's ground and surface water by saline conditions causes shortages of useable water for livestock, fish, wildlife, irrigation and domestic use; and

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WHEREAS, North Dakota's conserving base acreage in 1971 was reported at 4,994,478 or eighteen and one-half per cent (18½%) of cropland compared to Montana's forty per cent (40%); and

WHEREAS, a survey of twenty (20) western North Dakota counties in 1972 revealed that with similar, if not identical, history and 50-50 or 1/3-2/3 cropping patterns as Montana uses, conserving bases ranged from eighteen per cent (18%) to thirty-eight per cent (38%), averaging twenty-six and eight-tenths (26.8); and

WHEREAS, Montana and North Dakota are guided by the same federal laws and federal agricultural stabilization and conservation service procedures; and

WHEREAS, Montana state university, agricultural research and soil conservation services scientists have found ways to reduce erosion and saline seep by flexible and intensive rotational cropping of small grains, improved retention and use of soil moisture and judicious use of grasses; and

WHEREAS, this improved farm management includes proper crop selection, residue management, soil-water measurement and use and fertilizer use to which many producers should be educated; and

WHEREAS, such education falls within the responsibility of cooperative extension services; and

WHEREAS, there are cases where county agricultural stabilization and conservation committees are not using county agricultural extension agents to receive and dispense this technical advice as suggested by the Soil Conservation and Domestic Allotment Act, as amended; and

WHEREAS, there are cases where technical evaluation was not obtained from the SCS district conservationist for county agricultural stabilization and conservation committee determinations as prescribed by ASCS procedures; and

WHEREAS, there are cases where producers asked relief from county and state agricultural stabilization and conservation committees from enforced destructive practices which cause erosion and saline seep and where correction was refused; and

WHEREAS, there are cases where violation of federal law and ASCS procedures in some county determinations were stipulated to Montana agricultural stabilization and conservation state committee and agricultural stabilization and conservation service state executive director, but correction of destructive practices still was not allowed; and

WHEREAS, paragraph 37, part 2, ASCS procedure 5-PA reads: "The COC (county committee) (or designee) may reduce the

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conserving base on an acre-for-acre basis when the farm's cropland is reduced because of correcting and error. This applies to errors noted from new aerial photography or other means. A written appeal by the producer is not required''; and

WHEREAS, the error in reducing Montana cropland by saline seep can be determined by new aerial photography.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana agricultural stabilization and conservation state committee is urged to act immediately through county committees and with other agencies to lower Montana's conserving base to twenty per cent (20%) or lower, to halt destruction of Montana's natural resources in soil, water and wildlife by erosion and saline seep, to interpret and apply federal law and procedures in the same manner evidenced in other sovereign states, to cause close coordination with cooperative extension service, Montana state university, agricultural research service, soil conservation service and other technical agencies at state and county levels, to cause technically qualified evaluation of producer requests, to educate producers in intensive rotational cropping and improved farm management, to provide an increased reliable supply of feed grains at stable cost, to strengthen Montana's livestock and feeding industries and statewide economy, and

BE IT FURTHER RESOLVED, that the secretary of state send copies of this resolution to Secretary Earl M. Butz of the United State department of agriculture, the comptroller general of the United States, each member of the Montana congressional delegation in Washington, D.C., the governor of the state of Montana, each member of the Montana agricultural stabilization and conservation state committee, the executive director of Montana agricultural stabilization and conservation service, Secretary Rogers C.B. Morton of the United States department of the interior, Secretary George P. Schulz of the United States department of the treasury, Administrator William D. Ruckelshaus of the United States Environmental Protection Agency, Director Roy L. Ash of the United States office of management and budget, Honorable Jamie L. Whitten of the United States House of Representatives, the head of each involved department and agency within the state of Montana, and each county agricultural stabilization and conservation committee.

Approved: March 23, 1973.

HOUSE JOINT RESOLUTION NO. 11

A Joint Resolution of the Senate and the House of Representatives

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of the State of Montana Declaring the Rights of Mentally Retarded Persons as to Opportunities for Normalization.

WHEREAS, mentally retarded persons are often neglected by the society in which they find themselves, and

WHEREAS, mentally retarded persons' basic rights should be recognized and protected, and they be permitted to develop their potential to live as normal lives as possible.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislature hereby declares that the mentally retarded person has a right to as normal a life as possible despite the severity of his handicap and should be afforded the same basic rights as other citizens of Montana of the same age, and

BE IT FURTHER RESOLVED, that "normalization" is defined to mean that despite any limitation, each retarded individual shall be provided the maximum opportunity to participate in usual living experiences including education, work, and social activities that permit development to his highest potential, and

BE IT FURTHER RESOLVED, that such opportunity for normalization is the birthright of every citizen and a proper investment for the good of society, and

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent by the secretary of state to the department of institutions, the superintendent of public instruction, the state board of education, and the department of social and rehabilitation services.

Approved: March 10, 1973.

SENATE JOINT RESOLUTION NO. 12

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting the Legislative Council to Maintain a Continuing Study Committee to Oversee the Efforts of the Six Units of the University System in Avoiding Unnecessary Duplication.

WHEREAS, a joint resolution of the forty-second legislature requested a study of Montana higher educational systems with a view toward specialization of the various units by avoiding unnecessary duplications in the programs and degrees offered by each unit, and

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WHEREAS, due to the complexity of the study, the council recommended that it continue to oversee the efforts of the higher educational institutions, and

WHEREAS, this review committee should be in a position to encourage internal review of higher education in Montana and to evaluate the reviews made by these institutions.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is requested to conduct an interim review of the units of the university system with a view toward encouraging internal review of programs and degrees offered by the various units in order to better utilize the educational resources of the state.

BE IT FURTHER RESOLVED, that the interim committee encourage internal review and evaluate this review in cooperation with the various units in order to minimize and avoid unnecessary duplication.

Approved: February 25, 1973.

SENATE JOINT RESOLUTION NO. 13

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting the Legislative Council to Study the Problems Surrounding Use of Privately Owned Lands for Hunting and Fishing in Order that a Comprehensive System of "Pay Hunting" May Be Developed.

WHEREAS, the members of this 43rd legislative assembly recognize that hunting and fishing are an inherent way of life to the people of Montana, and

WHEREAS, much of this activity has historically been pursued on private lands at the pleasure and permission of those individual land owners, and

WHEREAS, the use by an increasing population, the rediscovery of this "unspoiled land" by affluent visitors and many other factors have encouraged the closing of such private lands to the general public, and

WHEREAS, we legislators recognize that the landowner in providing food and habitat for game, together with access to and use of his land by hunters and fishermen does at some expense and inconvenience provide a saleable service, and

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WHEREAS, we believe a state managed system covering this entire situation can best benefit both the landowner and the sportsman.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is directed to conduct a study of the above matters for the purpose of presenting legislation at the 1975 session providing for a system of "pay hunting" on privately owned lands within Montana. This study shall include the following:

(1) Voluntary payments to a managing agency by those hunting and fishing license holders wishing to use contracted lands.

(2) Payment to the landowner for hunting and/or fishing use of his land and for his expense to foster and encourage a desirable game environment.

(3) Insurance to the landowner against depredation and liability.

(4) A management plan.

(5) Other matters pertinent to this study, and

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent by the secretary of state to the executive director of the legislative council.

Approved: February 25, 1973.

SENATE JOINT RESOLUTION NO. 14

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting and Urging that the Congress of the United States Take Effective Action to Restore to the State of Montana the Full Amount of the Funds Which Have Been Legally Apportioned to the State but Which Have Been Improperly Reduced and Curtailed by the Executive Branch of the Federal Government Through the Device of "Contract Controls" and "Limitations of Obligation."

WHEREAS, the several states are charged with the responsibility for highway construction within their borders, and

WHEREAS, the United States secretary of transportation by law apportions amounts to the several states from the highway trust fund for reimbursement for the federal share of the cost of the system of interstate and defense highways, and

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WHEREAS, the executive branch of federal government has arbitrarily directed that the various apportionments be limited by "contract controls" and "limitations of obligation" thereby curtailing proper use of the apportioned funds by the several states, and

WHEREAS, further reduction in federal moneys may be attempted, and

WHEREAS, such reduction seriously curtails the highway construction program in the state of Montana, as well as in the nation, thereby seriously affecting employment and the production and sale of supplies, materials and equipment used for highway construction purposes, and

WHEREAS, reduction in federal highway construction funds has resulted in an equivalent reduction of the current highway safety program for eliminating unsafe and hazardous sections of highway, thereby contributing to accidents involving serious injury, loss of life and property damage, and to a new traffic fatality toll in 1972, and

WHEREAS, the state of Montana has developed long-range highway construction programs based on utilization of the full apportionment of federal funds to the states.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the president and the congress of the United States is hereby respectfully requested and urged to take effective action to restore to the state of Montana for expenditure the full amount of federal funds authorized by congress and legally apportioned heretofore by the United States secretary of transportation, and

BE IT FURTHER RESOLVED, that the secretary of state forward a duly certified copy of this resolution to the president of the United States and the secretary of the United States senate and the speaker of the house of representatives of the United States and to the Honorable Mike Mansfield and Lee Metcalf, senators from the state of Montana, and the Honorable John Melcher and Richard Shoup, congressmen from the state of Montana.

Approved: March 17, 1973.

SENATE JOINT RESOLUTION NO. 15

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Directing the Legislative Council to Evaluate the Need for State Coordination of the Planning,

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Marketing, and Servicing of Bond Issues in the State of Montana.

WHEREAS, a recent audit report issued by the office of the legislative auditor has indicated a need for the state to provide technical assistance in the planning, marketing, and servicing of public school bonds issues, and

WHEREAS, public elementary and secondary school districts, municipalities, and various state agencies and educational institutions in the state must now individually and on each occasion plan, market, and service their respective bond issues, and

WHEREAS, private nonprofit educational institutions also have a need for similar technical assistance in the area of financing the construction and acquisition of school facilities, and

WHEREAS, other states have found it beneficial to establish a means of state coordination and assistance in the planning, marketing, and servicing of governmental and private nonprofit bond issues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council conduct a study of the need for state coordination of the planning, marketing, and servicing of bond issues within the state and report the results of this study to the second session of the forty-third legislative assembly.

Approved: March 3, 1973.

SENATE JOINT RESOLUTION NO. 16

A Joint Resolution of the Senate and the House of Representatives of the State of Montana to the Honorable Mike Mansfield and the Honorable Lee Metcalf, Senators From the State of Montana, the Honorable Richard Shoup and the Honorable John Melcher, Representatives From the State of Montana, and to the Congress of the United States Asking That Federal Block Grant Assistance to Upgrade Law Enforcement and Criminal Justice in Montana Be Continued.

WHEREAS, statistical reports from the federal bureau of investigation show an increase in serious crime of eight percent (8%) in Montana during 1971, and

WHEREAS, during the past four (4) years, state and local governments have developed plans and resources for a coordinated effort to reduce crime and increase the effectiveness of Montana's criminal justice system, and

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WHEREAS, if congress reduces or terminates block grant funding assistance to the state of Montana now available through title 1 of the Omnibus Crime Control and Safe Streets Act, coordinated statewide efforts to control crime will be greatly jeopardized.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States maintain either a block grant or a special revenue sharing program of financial assistance to the state of Montana for the purposes of reducing crime and increasing the effectiveness of Montana's criminal justice system, and

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the secretary of state of Montana to the Honorable Mike Mansfield and the Honorable Lee Metcalf, senators from the state of Montana, the Honorable Richard Shoup and the Honorable John Melcher, representatives from the state of Montana, and to presiding officers of the senate and the house of representatives of the United States.

Approved: March 8, 1973.

SENATE JOINT RESOLUTION NO. 17

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Encouraging the Public schools to Include in Their Curricula Courses on Indian History, Culture and Contemporary Affairs, and Teacher Training Institutions to Provide Programs Specifically Designed to Prepare Teachers to Teach Indian Children.

WHEREAS, the constitution of the state of Montana declares that the state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity, and

WHEREAS, in 1969 the special senate subcommittee on Indian education of the congress reported that achievement levels of Indian children are two (2) to three (3) years below those of white students, and

WHEREAS, the special senate subcommittee also reported that the dropout rates of Indian students are approximately twice the national average for dropouts from all public schools.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the legislative assembly of the state of Montana encourages the public schools of the state to include in their curricula courses on Indian history, culture and contemporary affairs, as recommended by a representative committee of Indian people, and

BE IT FURTHER RESOLVED, that the legislative assembly encourages Montana teacher training institutions to provide programs specifically designed to prepare teachers to teach Indian culture, and

BE IT FURTHER RESOLVED, that the legislative assembly encourages the superintendent of public instruction to coordinate activities to assist the public schools and training institutions in developing curricula and educational programs designed to preserve the cultural integrity of the American Indians, and

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent by the secretary of state to the superintendent of public instruction for transmission to the public schools and training institutions of the state.

Approved: February 25, 1973.

SENATE JOINT RESOLUTION NO. 18

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Directing that Select Committees of the Senate and House of Representatives Study all Legislative Proposals Concerning Gambling and Wagering and Directing Members of the Forty-Third Legislature to Introduce all Legislative Bills Concerning Gambling or Wagering Prior to the Sixtieth Legislative Day of the 1973 Session of the Forty-Third Legislature.

WHEREAS, article III, section 9, of the 1972 Montana constitution, ratified as a separate side issue by the people of Montana at the June 6, 1972 election, permits the legislature to authorize forms of gambling, lotteries, and gift enterprises, and

WHEREAS, the legislative assembly now has before it bills which, if enacted, would allow limited games of chance in the form of bingo and raffles, and

WHEREAS, numerous other forms of gambling or wagering have been proposed, and

WHEREAS, the revenue potential and the general social efficacy of these gambling and wagering proposals for the people of the state of Montana has not been determined or evaluated, and

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WHEREAS, the proposals concerning gambling and wagering are of vital concern for the health and well-being of the people of the state of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That all members of the forty-third legislature introduce all bills concerning proposals for gambling or wagering on or before the sixtieth day of the 1973 session, and

BE IT FURTHER RESOLVED, that consideration of all proposals concerning gambling or wagering excepting bills relating only to bingo and raffles be deferred until the 1974 session of the forty-third legislature, and

BE IT FURTHER RESOLVED, that the committee on committes in the senate appoint a select committee of five (5) members and the speaker of the house of representatives appoint a committee of five (5) members, the two (2) committees to meet jointly during the interim between the regular sessions of the forty-third legislature, and to hold public hearings for the purpose of ascertaining the views of the people of Montana on the subject of gambling, and

BE IT FURTHER RESOLVED, that a copy of all senate and house bills concerning proposals for gambling or wagering excepting bills relating only to bingo and raffles be referred by the secretary of the senate or the chief clerk of the house of representatives to the chairman of the select committee of the house in which the bill originated for study and evaluation, and

BE IT FURTHER RESOLVED, that the respective select committees, acting as a conference committee, report on the proposed bills, together with their findings and evaluations, to the senate and the house of representatives no later than 5 p.m. on the fifth legislative day of the 1974 session of the forty-third legislature.

Approved: March 17, 1973.

SENATE JOINT RESOLUTION NO. 19

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting the Legislative Council To Evaluate and Report Upon the Manner in Which Audits of Political Subdivisions of the State are Accomplished.

WHEREAS, the new state constitution provides in article VIII, section 12, that:

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"The legislature shall by law insure strict accountability of all revenue received and money spent by the state, counties, cities, towns, and all other local government entities.", and

WHEREAS, auditing is an important part of the accountability process since it provides independent judgments of the credibility of public officials' statements about the manner in which they have carried out their responsibilities, and an effective audit program can help decisionmakers improve the efficiency, economy and effectiveness of governmental operations by identifying where improvements are needed, and

WHEREAS, the governmental audit program in Montana is now divided in that audits of state agencies and programs are functions of the legislative branch and audits of political subdivisions are functions of the executive branch, and

WHEREAS, there is a certain degree of overlap between state programs and programs of political subdivisions because of the increasing volume of state and federal grants to the political subdivisions, including revenue sharing, and

WHEREAS, the Model Post-Auditing Act promulgated by the United States general accounting office and the council of state governments provides for a single audit unit headed by a professional auditor responsible for the audit of all public entities in the state, and

WHEREAS, it is desirable to obtain input from the various levels of governmental entities involved to properly determine the best manner in which to accomplish the needed audits.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana legislative council evaluate the manner in which audits of political subdivisions of the state are accomplished to determine if the current method can be improved, and report the results of the evaluation to the 1974 session of the 43rd legislative assembly.

Approved: March 5, 1973.

SENATE JOINT RESOLUTION NO. 20

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Urging President Richard M. Nixon to Review the Plight of Montana and to Release Desperately Needed Funds Which Have Been Appropriated for Montana Programs.

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WHEREAS, the Congress of the United States has authorized the expenditure of moneys for many needed programs in Montana, and

WHEREAS, programs for highways, housing, rural electrification, rural environmental protection, emergency rural assistance, manpower training and other areas vital to Montanans are becoming ineffective as their funding is withheld, and

WHEREAS, the unemployment in Montana is one and one-half (1½) times the national average, and this unemployment would be greatly decreased with the release of funds appropriated for programs within Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That President Richard M. Nixon be respectfully urged to review the plight of Montana and to release desperately needed funds which have been appropriated for Montana programs, and

BE IT FURTHER RESOLVED, that copies of this resolution be sent to President Richard M. Nixon, to all of Montana's congressional delegation and to Governor Thomas L. Judge.

Approved: March 3, 1973.

SENATE JOINT RESOLUTION NO. 21

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting the Legislative Council to Conduct a Study of the Construction Laws of the State of Montana and Direct that Said Laws Be Recodified into a Modern and Adequate Construction Code.

WHEREAS, the state of Montana and its political subdivision have embarked on an unprecedented building program, and

WHEREAS, laws to regulate the design and construction industry have been enacted from time to time, and have become a hodgepodge of unrelated statutes, and

WHEREAS, legislative intent behind statutes regulating public construction is jeopardized by differing statements of policy, and

WHEREAS, the legislative council report no. 48 recommends that all Montana codes dealing with bidding, bonding and plan reviews of public works projects constructed within the state be substantively recodified, and

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WHEREAS, the need to comply with federal regulations and state laws makes it imperative that outmoded laws be repealed and the entire laws of the construction industry be updated, revised and recodified.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is requested to determine the best method to accomplish recodification of the laws relating to construction, and

BE IT FURTHER RESOLVED, that the legislative council be requested to submit its recodifying plan, together with necessary implementing legislation, to the forty-fourth legislative assembly, and

BE IT FURTHER RESOLVED, that the secretary of state is instructed to send a copy of this resolution to the legislative council.

Approved: March 8, 1973.

SENATE JOINT RESOLUTION NO. 22

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting that the Legislative Council Conduct a Study of a Statewide, Uniform License Fee System of Taxation of Automobiles, in Lieu of the New Car Sales Tax and Personal Property Taxes with an Anniversary System of Licensing and Registration of Vehicles Throughout the Year, and if They Find Such Legislation Feasible, to Draft Legislation for the Implementation of Such a System.

WHEREAS, automobiles are transitory in nature, and necessitate expenditures of public funds for construction and maintenance of streets and highways, and police protection, regardless of the place of residence of the owner, and

WHEREAS, a sales tax is imposed upon new cars and property taxes are imposed on used cars, and the difference in tax rates encourages delayed registration at the end of every year to escape taxation, and

WHEREAS, the drastic variation in millage rates between counties and between local tax jurisdictions, encourages falsification of the owner's address in the registration of automobiles, thus hindering law enforcement in the identification of stolen vehicles, tax evasion and related problems, and

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WHEREAS, the present system of requiring registration of all vehicles on or before February 15 of each year causes severe hardship for county assessors, county treasurers and automobile owners, and

WHEREAS, these inequities could be eliminated by the adoption of a uniform license fee system on automobiles, without depriving towns, cities and counties of necessary revenue, and of an anniversary system of registration and licensing, and

WHEREAS, the 1972 Montana constitution authorizes the legislature to provide for such a system.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is requested to conduct a detailed study to determine the feasibility of a uniform statewide license fee system of taxation of automobiles, at varying rates dependent upon the manufacturer's list price and the age of the vehicle, in lieu of the new car sales tax and personal property taxes, the proceeds of which would be distributed to the counties, cities, towns, school districts and other local taxing jurisdictions, to replace the personal property tax revenues now derived therefrom, and for a system of licensing and registration of vehicles throughout the year, on an anniversary date to be determined on the basis of the date of first registration, the age of the vehicle or such other basis as the council may recommend, and

BE IT FURTHER RESOLVED, that if the council finds such legislation feasible, it is requested to draft legislation for the implementation of such a system.

Approved: March 5, 1973.

SENATE JOINT RESOLUTION NO. 23

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Urging Secretary Earl Butz, Presidential Counselor for Natural Resources, to Work Toward Provision of Adequate Funds for Productive Management of Federal Lands.

WHEREAS, the public land resources of the nation make a vital contribution to the physical and economic needs of its people, and

WHEREAS, it is imperative that long-range management of these lands be directed toward harmonizing human needs and em-

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ployment opportunities with protection of the resource base and the environment, and

WHEREAS, desired progress toward this objective by federal land agencies is seriously hampered by lack of funds and manpower.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Honorable Earl Butz, presidential counselor for natural resources, be and is hereby urged to work for the provision and release of substantial additional funding for federal land management agencies, and

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the Honorable Richard M. Nixon, President of the United States; to the Honorable Rogers C. B. Morton, secretary of the interior; to the Honorable Mike Mansfield and the Honorable Lee Metcalf, senators from Montana; and to the Honorable Richard C. Shoup and the Honorable John Melcher, congressmen from Montana.

Approved: March 8, 1973.

SENATE JOINT RESOLUTION NO. 24

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Directing the Environmental Quality Council to Undertake a Study, Make Recommendations and Propose Legislation Concerning the Development and Implementation of a State Energy Policy as it Relates to a Developing National Energy Policy and Requesting the Governor to Direct the Coal Task Force to Work with and Advise the Environmental Quality Council.

WHEREAS, the legislative assembly recognizes a need for a state energy policy to contribute and respond to a federal energy policy, and

WHEREAS, a study of this need should carefully separate nationwide problems from those that are matters for action at the state level, and

WHEREAS, there is a need to consider the full range of possible energy sources, optimal efficiency, conservation of use, and administration and regulation of the energy industry, and

WHEREAS, the environmental quality council has received a private grant to make such a study as is described above, which is

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to relate to an ongoing national energy policy study financed and conducted by the source of the private grant, and

WHEREAS, section 69-6514(f), R.C.M. 1947, makes it the duty of the executive director and staff of the environmental quality council to make and furnish such studies, reports thereon and recommendations with respect to matters of policy and legislation as the legislative assembly requests, and

WHEREAS, the governor, acting on the recommendation of the environmental quality council, created on August 2, 1972, an interagency task force on coal development to coordinate comprehensive planning incorporating consideration of the social, economic and environmental well-being of Montana people in present and future generations.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the environmental quality council is hereby directed to undertake a thorough study, prepare a report, make recommendations and propose legislation concerning the development and implementation of a state energy policy as it relates to a developing national energy policy.

BE IT FURTHER RESOLVED, that the governor is requested to direct the coal task force to work with and advise the environmental quality council in conducting a state energy policy study.

BE IT FURTHER RESOLVED, that the avowed purpose of this resolution is to obtain a comprehensive energy policy, together with recommendations for necessary implementing legislation, to insure a reliable and adequate supply of energy in a manner consonant with the preservation of environmental values and the prudent use of the state's air, land, water and energy resources.

BE IT FURTHER RESOLVED, that copies of this resolution be delivered to the Honorable Thomas L. Judge, Governor of the State of Montana; to the Honorable Mike Mansfield and Lee Metcalf, United States Senators from the State of Montana, the Honorable John Melcher and Richard Shoup, Congressmen from the State of Montana and to the Honorable Rogers Morton, Secretary of Interior of the United States, to the presidential Counselor for natural resources and to the Montana coal task force.

Approved: March 7, 1973.

SENATE JOINT RESOLUTION NO. 25

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Respectfully Requesting the President

and the Congress of these United States to Make Available Additional Moneys and Manpower for Predator Control Research.

WHEREAS, the livestock industry of the state of Montana is an essential industry that provides meaningful moneys and employment to Montanans, and

WHEREAS, the livestock industry is affected adversely by coyote depredation and other factors such as disease, weather and prices, and

WHEREAS, depredation is extremely difficult to control, and

WHEREAS, Montana is committed to the preservation of our environment for future generations, and to prevention of depredation with minimal adverse effect upon the environment, and

WHEREAS, with the present lack of sufficient knowledge the control of predators remains extremely controversial which makes solutions difficult to obtain, and

WHEREAS, the state's advisory council on rodents and rabid skunks having reviewed the predator problem recommends, and the legislature concurs, that the most reasonable approach to this difficult problem is to carry out basic research on predators on the national level.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana respectfully requests the president and congress to make available additional moneys and manpower for predator control research, and

BE IT FURTHER RESOLVED, that Montana requests the president and congress to support this resolution and continue to support basic research on predators directed at resolving environmental and economic considerations, and

BE IT FURTHER RESOLVED, that Montana recommends that these research funds be utilized in establishing methods for determining and evaluating:

(1) predator-prey population dynamics,

(2) predator-prey relationships,

(3) predator damage assessments,

(4) depredation control,

(5) related social economic data, and

(6) management practices of livestock industries, and

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BE IT FURTHER RESOLVED, that a copy of this resolution be sent by the secretary of state of Montana to the president of these United States and to the congress through Montana's appropriate delegates, and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the governor for his review and support, and

BE IT FURTHER RESOLVED, that the governor may use this resolution to enlist the support of other states.

Approved: March 8, 1973.

SENATE JOINT RESOLUTION NO. 26

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Respectfully Requesting the Congress and the President of these United States to Establish a National Rabies Wildlife Research Program to Provide Protection to the Citizens of Montana and Other States.

WHEREAS, the state of Montana has experienced wildlife rabies for many years and expects to continue experiencing wildlife rabies in the future and

WHEREAS, the exposure of Montana citizens directly to wildlife rabies subjects these individuals to a traumatic experience of fear for life and the ordeal of receiving antirabies inoculations, and

WHEREAS, communities experiencing wildlife rabies make demands to state and local governments for control measures which may or may not alleviate the problem, and

WHERAS, wildlife rabies is transmissible to domestic livestock and results in economic losses, and

WHEREAS, when skunk rabies occurs, Montana has carried out selective skunk populations suppression programs the results of which remain subject to many varying opinions and interpretations as to their effectiveness, and

WHEREAS, rabies in wildlife is a problem that involves several agencies of government making it difficult to define primary responsibility and coordination and cooperation between agencies is necessary for adequate solution of the problem, and

WHEREAS, rabies in wildlife is a problem common to many of the contiguous states, Alaska and Canada and respects no political or administrative boundaries, and

WHEREAS, the department of agriculture's advisory council on rodents and rabid skunks having made a comprehensive review

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of rabies in wildlife find that more research is needed to obtain information to protect man and livestock from wildlife rabies:

(1) More information is needed on the epidemiology of wildlife rabies.

(2) More information is needed on the ecology of vector species having a high incidence of rabies.

(3) More effective, ecologically sound control measures must be developed.

(4) Finally, the council recommended that such studies should be initiated and coordinated by the federal government to provide for a standardized rational rabies control program.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana respectfully requests the congress and president of the United States to provide the necessary manpower and funds to implement a national research effort on rabies and its control in wildlife, and

BE IT FURTHER RESOLVED, that Montana is desirous of establishing animal control programs based upon scientific findings which do not adversely affect our environment but provide the methods to protect man and livestock from wildlife rabies, and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent by the secretary of state of Montana to the United States congress through Montana's appropriate delegates and to the president of the United States, and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the governor for his review and possible use in establishing programs to protect and assist the citizens of Montana, and

BE IT FURTHER RESOLVED, that the governor at his discretion may forward this resolution to other states for their review to establish and coordinate similar programs among states to achieve the purpose of this resolution.

Approved: March 5, 1973.

SENATE JOINT RESOLUTION NO. 27

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Providing for a Special Committee to Inquire into the Requirements Necessary to Insure a High

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Quality of Legislative Employees.

WHEREAS, the legislative attaches are a vital adjunct to the operation of the legislative assembly, and

WHEREAS, it is in the public interest that the legislative assembly engage competent and able people to assist it, and

WHEREAS, circumstances affecting the conditions of employment are constantly changing, and

WHEREAS, it is the desire of the legislative assembly to treat its employees in a fair and equitable manner.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the speaker of the house of representatives appoint four (4) members of that house, two (2) from each political party, and the senate committee on committees appoint four (4) members from the senate, two (2) from each political party, to a special joint committee chosen from the legislative administrative committees to study the need for legislative employees, and

BE IT FURTHER RESOLVED, that the committee study include such items as the number of employees needed, wages, job title, classification and duties of each employee, and

BE IT FURTHER RESOLVED, that the special committee report its findings in writing to the forty-fourth legislative assembly, and

BE IT FURTHER RESOLVED, that this committee report be left with the secretary of state for dissemination to the next legislative assembly.

Approved: March 23, 1973.

SENATE JOINT RESOLUTION NO. 28

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Urging Motorists to Drive With Their Headlights on Low Beam in the Daytime to Deter Head-On Collisions; and Providing an Effective Date.

WHEREAS, hundreds of Montanans lose their lives in traffic accidents each year, and

WHEREAS, one out of every five traffic accidents on the open highway are the result of head-on collisions and that head-on col-

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lisions in Montana increased by nearly one hundred per cent (100%) last year, and

WHEREAS, many of these head-on collisions might have been prevented if the drivers could see the oncoming vehicles, and

WHEREAS, it has been proven that motorists make themselves more visible to oncoming traffic by driving with headlights on low beam in the daytime hours in that this practice has been proven beneficial in reducing the number of head-on collisions.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the motorist public of Montana be encouraged to drive with their headlights on low beam in the daytime to deter head-on collisions on the open highway.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the secretary of the senate to the publisher of each newspaper in the state, and

BE IT FURTHER RESOLVED, that this resolution shall be effective on passage and approval.

Approved: March 23, 1973.

SENATE JOINT RESOLUTION NO. 30

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Expressing Gratitude to Montana Landowners Who Share the Public Fish and Wildlife Resources and Reaffirming Support of Proper Fish and Wildlife Management.

WHEREAS, the human population has existed through prehistoric and recorded time in Montana in a close and special relationship with Montana's wildlife populations, and

WHEREAS, the economic and material sacrifices necessary to accomodate and consequently perpetuate fish and wildlife resources have always and continue to be willingly made by Montanans in all walks of life, and

WHEREAS, it is clearly the right and responsibility of the state of Montana to manage its resident fish and wildlife populations as granted by the United States constitution, and

WHEREAS, Montanans have in turn benefited from this special relationship by having reasonable opportunity to enjoy and utilize this renewable resource through hunting, fishing and a variety of

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nonconsumptive recreational pursuits on both public land and at the indulgence of many Montana landowners on private land, and

WHEREAS, recent observations indicate much land in Montana is now being acquired by out-of-state interests and many prime hunting and fishing areas are becoming unavailable to Montana sportsmen and recreationists.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly expresses gratitude to those Montana landowners who have been so benevolent and tolerant over the years and beg their continued indulgence to not only share this public fish and wildlife resource, but in doing so to foster a binding friendship between Montana's urban and rural citizens, and

BE IT FURTHER RESOLVED, that the legislative assembly recognizes the importance of public fishing and hunting to the Montana way of life and to the well being of its citizens, and

BE IT FURTHER RESOLVED, that the legislative assembly declares its firm intention to not allow the state's fish and wildlife resources to be exploited by nonresident interests at the expense of Montana citizens, and

BE IT FURTHER RESOLVED, that the legislative assembly reaffirms its support of land management which prevents the destruction of wildlife habitat and fish and wildlife management which perpetuates these important resources for present and future generations, and

BE IT FURTHER RESOLVED, that the secretary of state send copies to: Montana stockgrowers association; Montana woolgrowers association; each conservation district; affiliates of the Montana wildlife federation; Montana fish and game department; Montana farm bureau; Montana farmers union; Montana cattlemen association; Montana state grange; Montana national farmers organization; and Montana grain growers.

Approved: March 8, 1973.

SENATE JOINT RESOLUTION NO. 31

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Reqesting the legislative council to Study Administration and Finance of Montana Libraries.

WHEREAS, library services are essential to the citizens of Montana, and

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WHEREAS, there are increasing demands for library services, and

WHEREAS, there are always new developments in the field of library sciences, and

WHEREAS, cooperation and assistance between libraries is essential.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is requested to study the administration and finance of all libraries in Montana and to make recommendations for legislation to the second session of the forty-third legislative assembly.

Approved: March 17, 1973.

SENATE JOINT RESOLUTION NO. 33

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting the Governor of the State of Montana Immediately to Marshal all Resources of the State and to Seek Emergency Aid from the Federal Government to Halt Further Destruction of Montana's Natural Resources in Soil, Water and Wildlife and Further Damage to Montana's Ecology and Economy by Saline Seep Caused by Agricultural Practices and Geologic Conditions.

WHEREAS, the United States department of agriculture's Montana committee for rural development and soil conservation service soil scientists reported eighty-one thousand four hundred thirty (81,430) acres of saline seep in twenty-five (25) Montana counties in March 1971, and

WHEREAS, that report listed only eight hundred (800) acres for Valley County, but in 1972 only forty (40) producers reported two thousand six hundred eighty-nine (2,689) acres, and

WHEREAS, the United States department of agriculture's state committee for rural development in its December 31, 1971, Montana situation statement recognized increasing saline destruction of Montana's cropland and increasing saline pollution of Montana's water, and

WHEREAS, water earlier became unpalatable at Nashua then downstream at Wiota and now has spread further downstream to Frazer on the Missouri river, and

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WHEREAS, fish no longer can live in many stockwater ponds in northeastern Montana, and

WHEREAS, the United States department of agriculture's Montana committee for rural development, based on geologic conditions, estimated there are eight million (8,000,000) acres of potential saline seep areas in Montana, and

WHEREAS, Montana bureau of mines and geology by recent report said one hundred fifty thousand to two hundred fifty thousand (250,000) acres of nonirrigated Montana farmland has now been lost to saline seep, that this destruction is increasing in excess of ten per cent (10%) per year compounded and that some saline seep discharge has measured salinity one and one-half (1.5) times that of seawater, and

WHEREAS, agricultural practices of enforced summer fallow and double summer fallow have contributed strongly to increasing destruction by saline seep requiring special attention and remedial action in the agricultural sector, and

WHEREAS, correction of these agricultural practices will require interagency coordination and education of many producers in improved farm management, and

WHEREAS, saline seeps and recharge sites override property and geo-political boundaries requiring treatment on an area, not single farm, basis, and

WHEREAS, producers having land comprising seep and recharge areas may require compensation within the federal farm program to offset losses and costs accruing from treatment of saline conditions, and

WHEREAS, damage and treatment of saline conditions involves functions and responsibilities of Montana state university, school of mineral science and technology, cooperative extension service, departments of health, agriculture, land and investments, natural resources and conservation, the environmental quality council, United States department of agriculture's agricultural research, soil conservation and agricultural stabilization and conservation services and other federal agencies, and

WHEREAS, increasing pollution of Montana's waters will effect downstream user states, and

WHEREAS, saline-alkali destruction and pollution is creating a problem of near-crisis proportions requiring emergency treatment pending completion of further research, and

WHEREAS, massive funding, coordination and education are

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required to prevent further destruction of Montana's natural resources, and

WHEREAS, the scope and urgency of the situation dictate that top priority be assigned to correction of the saline-alkali problem.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the governor of the state of Montana is urged to act immediately to assemble all current data on saline-alkali research from the heads of involved departments and agencies, to convene an emergency meeting of the heads of these departments and agencies to obtain their immediate recommendations on emergency treatment of the saline-alkali problem, to assign top priority to correction of the problem, to encourage and enjoin special attention and remedial action for agricultural practices, to establish immediate corrective measures based on current research, to marshal all available resources including federal aid to develop and execute comprehensive plans, special research and education to prevent further destruction of Montana's natural resources in soil, water and wildlife, and

BE IT FURTHER RESOLVED, that the secretary of state send copies of this resolution to Honorable Thomas L. Judge, Governor of the state of Montana, Secretary Earl M. Butz of the United States department of agriculture, Secretary Rogers C. B. Morton of the United States department of interior, Comptroller General Elmer Staats of the United States, Director Roy Ash of the United States office of management and budget, Honorable J. L. Whitten, United States House of Representatives, each member of the Montana congressional delegation in Washington, D.C. and the head of each involved department and agency.

Approved: March 8, 1973.

SENATE JOINT RESOLUTION NO. 34

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Providing for the Legislative Council to Conduct an Iterim Study on Health Maintenance Organizations for Montana.

WHEREAS, soaring medical costs, maldistribution and shortages of medical manpower, and other problems have made the state of the nation's health services a prime concern of government as well as of individuals, and

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WHEREAS, the employer today foots the lion's share of the national health bill, and

WHEREAS, if national health insurance is enacted and in operation, the typical business will see its spending on medical insurance at least doubled, and

WHEREAS, health statistics that compare with other countries get worse all the time despite the miracle drugs and operations, and

WHEREAS, health insurance organization has proven effective in paying more attention to preventive medicine and spotting illness at an early stage which will cut down on high-cost operations and hospitalizations that occur when illness only comes to light in its later stages.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council conduct an interim study to look into health maintenance organizations, study the health plans of states that have them in operation — such as California, Oregon, Ohio and Washington — as a means of bringing better health care to the people of Montana.

Approved: March 8, 1973.

SENATE JOINT RESOLUTION NO. 35

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Encouraging the Department of Natural Resources and Conservation to Investigate the Feasibility of the State Constructing Water Resource Projects to Supply Water, if Needed, for Coal Development in Eastern Montana.

WHEREAS, if large-scale energy-related development occurs in eastern Montana, vast quantities of water will be required, and

WHEREAS, the storage reservoirs, aqueducts and similar facilities could be constructed by either the federal government, state government or private industry, and

WHEREAS, the board of natural resources and conservation, under title 89, chapter 1, R.C.M. 1947, has the authority to issue revenue bonds, without obligation to the state, to finance the costs of construction, acquisition of property and water rights, feasibility studies, and other costs associated with constructing such water resource projects, and

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WHEREAS, if the state were to construct the facilities, certain benefits to Montana would be realized, among which are the following:

(1) Montana would be able to benefit financially from the use of water for industrial purposes, as would not be the case if other groups undertake the construction, and general fund moneys could be generated for public uses;

(2) a priority would be given agricultural, recreational and domestic uses to ensure that industrial demand, and the resultant higher market prices, does not force cessation of these other desirable water uses;

(3) control of constructing these facilities and regulation of the water use would remain with the state to ensure that environmental considerations are given the highest priority; and

(4) the water rights would remain with the state and the use of the water would revert immediately to the state after the contracts for the sale of water expired, thus affording a periodic determination of whether or not such use of the water is in the best public interest.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the department of natural resources and conservation is encouraged to investigate the feasibility of the state issuing revenue bonds to construct water resource projects related to energy production in eastern Montana, providing that no decisions to construct are made before all provisions of the Montana Environmental Policy Act are met.

Approved: March 15, 1973.

SENATE JOINT RESOLUTION NO. 36

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requiring the Legislative Administration Committees of the House and the Senate Meeting Jointly to Employ a Business Manager.

WHEREAS, the legislative administration committees employ the personnel for the legislature, and

WHEREAS, these two (2) committees have considerable experience and knowledge about the duties of legislative personnel, and

WHEREAS, these two (2) committees will be working in close proximity with the business manager.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That before the sixtieth day of the 43rd session, a business manager shall be employed by the legislative administration committees of the house and the senate at a special joint committee meeting.

Approved: March 23, 1973.

SENATE JOINT RESOLUTION NO. 37

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Expressing the Support of the Montana Legislative Assembly for Legislation Proposed in Congress Which Calls for the Establishment of Mining, Mineral, and Environmental Research Centers in Each State.

WHEREAS, Montana has produced mineral commodities estimated to have had a marketable value of over three hundred million dollars ($300,000,000) in 1972, and

WHEREAS, the increased demand for metallics, non-metallics and mineral fuels is certain to result in an increased demand for Montana's natural resources, and

WHEREAS, it is absolutely essential that there be available professionals with the necessary technological background to extract these commodities from the earth with a minimum degradation to our environment, and

WHEREAS, the Honorable Mike Mansfield has placed a high priority on legislation calling for the establishment of mining, mineral, and environmental research centers in each state, legislation which has been rejected by the president.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly of the state of Montana express its full support of Senator Mansfield in pursuing legislation to establish mining, mineral, and environmental research centers in each state, and

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent by the secretary of state of Montana to the members of the Montana congressional delegation, Senators Mike Mansfield and Lee Metcalf, and Representatives John Melcher and Richard Shoup.

Approved: March 15, 1973.

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SENATE JOINT RESOLUTION NO. 38

A Joint Resolution of the Senate and the House of Representatives of the State of Montana to the Honorable Mike Mansfield and the Honorable Lee Metcalf, Senators from Montana, and the Honorable John Melcher and the Honorable Richard Shoup, Representatives from Montana, Requesting the Montana Congressional Delegation to Urge the Appropriate Agencies of the United States Government to Fulfill Their Responsibility to Reconstruct the Access Roads to Missile Sites in the Nine (9) County Missile Complex Area to Bring Said Roads into Compliance with Essential Minimum Standards of Safety.

WHEREAS, in 1960 the United States government determined that the construction of a number of minutemen missile sites in Montana was essential to the defense of this nation, and

WHEREAS, because of the emergency nature of this project, Montana state highway commission and the county commissioners of Teton, Pondera, Toole, Chouteau, Cascade, Fergus, Wheatland, Lewis and Clark, and Judith Basin counties agreed to permit the roads to these missile sites to be constructed in a manner not in compliance with normal standards of construction as to widths, grade, contour, drainage, etc., and

WHEREAS, the maintenance of these roads is the responsibility of the counties and the substandard construction of these roads makes adequate maintenance costly and difficult, and

WHEREAS, these roads, as presently designed and constructed, are extremely hazardous and a serious danger to the users of said roads, both military and civilian, and

WHEREAS, the federal highway administration, bureau of public roads, United States air force and the Montana highway commission have all indicated the necessity to improve and rebuild said roads, and

WHEREAS, the counties of Teton, Pondera, Toole, Chouteau, Cascade, Fergus, Wheatland, Lewis and Clark, and Judith Basin have already expended an excessive amount of local funds to maintain said roads and are unable to finance the necessary reconstruction to bring said roads into compliance with federal specifications for safety.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States of America immediately undertake to upgrade and adequately reconstruct the missile defense access roads

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located in the Teton, Pondera, Toole, Chouteau, Cascade, Fergus, Wheatland, Lewis and Clark, and Judith Basin counties within the state of Montana, and

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the secretary of state to the Honorable Mike Mansfield and the Honorable Lee Metcalf, senators from Montana, and to the Honorable John Melcher and the Honorable Richard Shoup, representatives from Montana, the Honorable Elliot Richardson, secretary of the department of defense and the Honorable Francis C. Turner, administrator of the federal highway administration of the United States office of transportation.

Approved: March 10, 1973.

SENATE JOINT RESOLUTION NO. 39

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Affirming the Governor's Appointment of a Coal Task Force and Requesting that the Coal Task Force Continue to Investigate and Report on the Impact of Coal Development and Coordinate Coal-Related Research Proposals.

WHEREAS, the governor, on August 2, 1972, created an interagency task force to:

(1) bring coordination to all state agencies' activities with regard to coal and water development in eastern Montana,

(2) identify problems and research needs,

(3) work with the federal agencies and private sector to develop a program for solving problems and research needs so identified,

(4) work with the federal government and private sector to develop a comprehensive plan which would guarantee wise development of coal and water resources,

(5) review existing laws and recommend the changes necessary for orderly development, and

WHEREAS, the department of natural resources and conservation has appointed a full-time task force coordinator, and

WHEREAS, representatives from the department of natural resources and conservation, department of state lands, department of fish and game, division of planning and economic development, highway department, department of health and environmental sciences, and the environmental quality council have been assigned to the task force, and

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WHEREAS, the governor's budget as submitted to the legislature provides for an increase in staff for the coal task force.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly affirms its support of the governor's executive action creating the coal task force and requests that the coal task force be established on a continuing basis, and

BE IT FURTHER RESOLVED, that the coal task force guide and direct comprehensive planning incorporating provisions for industrial systems, agricultural systems, residential systems, commercial systems, educational systems, park and recreation systems, a system of cultural amenities, a communication system, and transportation systems, and

BE IT FURTHER RESOLVED, that the coal task force continue to coordinate the various coal-related research proposals for the purpose of increasing the relevance and comprehensiveness of the information that is gathered, and

BE IT FURTHER RESOLVED, that the coal task force prepare a report prior to each legislative session and, as needed, make more frequent reports to the legislative interim committees on natural resources and the environmental quality council.

Approved: March 6, 1973.

SENATE JOINT RESOLUTION NO. 40

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting the Director of the Department of Business Regulation to Create an Unfair Practices Advisory council to Advise the Department Regarding Enforcement of the Unfair Practices Act.

WHEREAS, it is of utmost importance to the economy of the state of Montana that consumers and businesses alike benefit from the Unfair Practices Act, and

WHEREAS, the health of small private enterprises is as important to the state and nation as that of giant industry, and

WHEREAS, the health of the business community in general is necessary and vital for the good of the state of Montana, and

WHEREAS, business experiences and input into the department of business regulation is necessary for the operation of controls upon business for the orderly operation of business in Montana.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the director of the department of business regulation create an unfair practices advisory council consisting of one (1) member from the retail food industry, one (1) member from the wholesale food industry, one (1) from the retail department store industry, one (1) from the hardware-implement store industry, one (1) member from the retail drug industry, and such additional members as may be considered desirable or necessary, and

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent by the secretary of state of the state of Montana to the director of the department of business regulation and to the governor.

Approved: March 5, 1973.

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CHANGES IN NAMES DECREED IN 1971 - 1972

Date of Judgment	Original Name	Name Decreed	Residence
Jan. 12, 1971	Gary Lee Joseph	Gary Lee Birkenbuel	Cascade County
Jan. 12, 1971	Dennis James Joseph	Dennis James Birkenbuel	Cascade County
Jan. 27, 1971	Glen Edgar Richardson	Glenn Edgar Jay	Madison County
Jan. 28, 1971	Marvin Eugene Leighty	Marvin Eugene Gursky	Missoula
Feb. 3, 1971	Madge Cornish	Madge Gines	Great Falls
Feb. 16, 1971	Keith Allen Hall	Keith Allen Volkman	Kalispell
March 1, 1971	Gail Helen Powers	Gail Helen Gehan	Billings
March 2, 1971	Dane Christopher Savage	Dane Christopher Henschel	Beaverhead County
March 2, 1971	Brett Allan Savage	Brett Allan Henschel	Beaverhead County
March 2, 1971	Kim Rowen Savage	Kim Rowen Henschel	Beaverhead County
March 2, 1971	Sean Timothy Savage	Sean Timothy Henschel	Beaverhead County
March 17, 1971	Charlotte L. Moore	Charlotte L. Young	Malta
March 18, 1971	Kimberly Sue Stanton	Susan Kimberly Stanton	Hardin
March 26, 1971	Orin Joseph Keeney	Russell Orin Keeney	Great Falls
March 29, 1971	Jose Antonio Ruiz	Jose Antonio Muniz	Missoula
March 30, 1971	James Frederick Smith	James Frederick King	Kalispell
March 30, 1971	Sandra Jean Smith	Sandra Jean King	Kalispell
April 5, 1971	Glen Gary Hensley	Glen Gary Nelson	Billings
April 7, 1971	Joseph Lee Stanisich	James Lee McAboy	Butte
April 12, 1971	John Patrick Boyd	John Patrick Haley	Marietta, Georgia
April 21, 1971	Evelyn V. Anker	Evelyn V. Johnson	Yellowstone County
April 26, 1971	Jeannie Gail Gahagan	Jeannie Gail Beaver	Billings
April 27, 1971	Larry Lee Cooper	Larry Lee Naef	Garrison
April 28, 1971	Clarence Gilbert Allison	Ross Leroy Gustafson	Armington
April 28, 1971	Georgia Anna Salois	Juliann Marie Gustafson	Armington
April 28, 1971	Elmer Francis Salois	John Joseph Gustafson	Armington
April 28, 1971	Jerry Lee Nelson	Jerold Roy Gustafson	Armington
May 7, 1971	Larry Clyde G. Jensen	Larry Clyde Gaffaney	Helena
May 14, 1971	Jesse Gutierrez	Jesse Anthony Slevira	Billings
May 25, 1971	Marjorie A. Berry	Marjorie A. Wrzesinski	Ryegate
May 26, 1971	Randy Renaldo Meza	Randy Renaldo Crowder	Great Falls
May 26, 1971	Janet Elizabeth Johnson	Janet Elizabeth Landis	Cascade County
May 26, 1971	James Arthur Johnson	James Arthur Landis	Cascade County
May 26, 1971	Frank Joseph Johnson	Frank Joseph Landis	Cascade County
May 28, 1971	Michael Anthony Bodette	Michael Anthony Kessler	Cascade County
June 7, 1971	Robert Lewis Stephenson	Robert Lewis Frisbey	Great Falls
June 7, 1971	Mark Andrew Stephenson	Mark Andrew Frisbey	Great Falls
June 7, 1971	Denice Lynn Stephenson	Denice Lynn Frisbey	Great Falls
June 11, 1971	Darcy Dean Johnson	Darcy Dean Peterson	Harlowton
June 25, 1971	James Angel Bazques	James Angelo Santiago	Great Falls
June 25, 1971	John Ralph Bazques	John Ralph Santiago	Great Falls
June 25, 1971	Raymond Joseph Bazques	Raymond Joseph Santiago	Great Falls
June 25, 1971	Ellen Doris Bazques	Ellen Doris Santiago	Great Falls
July 2, 1971	Donald Lee Watkins	Donald Lee McFarsen	Yellowstone County
July 6, 1971	Mac Jay Moulton	Mac J. Haskins	Superior
July 7, 1971	May Spencer Taylor	Pearl Rosalie Spencer Taylor	Billings
July 7, 1971	Caroline Emee Sanstrom	Caroline Emee Parent	Miles City
July 12, 1971	Steven Terry Green	Steven Terry Wayman	Missoula
July 21, 1971	Joel Fredrick Kingsley	Fred Jay Reed	Billings
July 21, 1971	Elizabeth Ann Kingsley	Elizabeth Ann Reed	Billings
July 23, 1971	Riley T. McGiboney	Riley Tobin McGiboney	Great Falls
July 26, 1971	Robbin Harvey Asman	Robbin Harvey Fleming	Kalispell
Aug. 2, 1971	George Hobart Myrick	George Myrick	Bozeman
Aug. 9, 1971	Patricia Ann McGhee	Patricia Ann Dent	Miles City
Aug. 13, 1971	Erma D. Bankey	Erma D. Nelson	Miles City
Aug. 20, 1971	Sophia A. Welter	Sophia A. Prazma	Missoula
Aug. 26, 1971	Linda Susan Russell	Linda Susan Martin	Missoula
Aug. 30, 1971	Sharon Kathleen Lenn	Sharon Kathleen O'Connell	Missoula
Aug. 30, 1971	Thomas Carrol Winn	Thomas Carrol Jarland	Yellowstone County
Aug. 30, 1971	Larry William Hoar	Larry William Hamilton	Bozeman
Aug. 30, 1971	Joyce Westgard Hoar	Joyce Westgard Hamilton	Bozeman
Aug. 30, 1971	Suzanne Dawn Hoar	Suzanne Dawn Hamilton	Bozeman
Sept. 15, 1971	Dina Margaret Stinger	Mary Ann Stinger	Anaconda
Sept. 15, 1971	Kathie B. Todd	Kathie B. Gar	Roy
Sept. 15, 1971	Jeanne S. Younger	Jeanne Myron Scott	Malta
Sept. 21, 1971	Rodney Howard Henson	Howard Roderick Henson	Kalispell
Sept. 23, 1971	Mary M. Sigurdson	Mary M. Newell	Shelby
Sept. 23, 1971	Faye Alice Parker	Faye Alice Strang	Cut Bank
Sept. 28, 1971	Timothy Russell Doherty	Timothy Russell Crawford	Anaconda
Sept. 29, 1971	Della Marie Senner	Della Marie Mac Grady	Dawson County
Oct. 5, 1971	Roger Gilbert Larsen a/k/a Roger Gilbert Larson	Erick Thorman	Park County
Oct. 13, 1971	Retter Grace Corlinsin	Rita Grace Collins	Great Falls
Oct. 18, 1971	William Tracy Michael	Michael William Holland	Gallatin Gateway
Oct. 28, 1971	Sherry L. Ward	Sherry L. Norton	Miles City
Oct. 28, 1971	Travis LeRoy Pronteau	Travis LeRoy Songer	Helena
Nov. 6, 1971	Herbert William Brekken	Herbert William Belcher	Bozeman

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CHANGES IN NAMES DECREED IN 1971 - 1972

Date of Judgment	Original Name	Name Decreed	Residence
Nov. 6, 1971	Julia Mae Romo Brekken	Julia Mae Romo Belcher	Bozeman
Nov. 6, 1971	Earl Raymond Brekken	Earl Raymond Belcher	Bozeman
Nov. 6, 1971	Celeste Lynn Brekken	Celeste Lynn Belcher	Bozeman
Nov. 6, 1971	Kent Anders Brekken	Kent William Belcher	Bozeman
Nov. 6, 1971	Blaine Walter Brekken	Blaine Walter Belcher	Bozeman
Nov. 6, 1971	Laurel Lea Brekken	Laurel Lea Belcher	Bozeman
Nov. 11, 1971	Deborah Ellen Clark	Deborah Ellen Davis	Hardin
Nov. 19, 1971	Marvin Edward Silva	Marvin Edward Colman	Superior
Nov. 24, 1971	George C. Randall	George C. Rand	Adrian, Michigan
Nov. 26, 1971	Jody Mitchell	Jody Nichols	Butte
Dec. 2, 1971	Clara Edith Pruett	Clara Edith Phillippi	Miles City
Dec. 6, 1971	William Edward Miller	William Edward Sternthal	Yellowstone County
Dec. 7, 1971	Eugenia Irgens	Eugenie Knowles Irgens	Great Falls
Dec. 8, 1971	Thomas Joseph Big Spring	Thomas Joseph Night Gun	Browning
Dec. 8, 1971	Justine May Big Spring	Justine May Night Gun	Browning
Dec. 8, 1971	Yvonne Marie Big Spring	Yvonne Marie Night Gun	Browning
Dec. 8, 1971	Jolene Fay Big Spring	Jolene Fay Night Gun	Browning
Dec. 8, 1971	Dorothy Jane Baldwin	Dorothy Jane Samson	Yellowstone County
Dec. 10, 1971	Michael Gene Lytle	Michael Gene McDermott	Yellowstone County
Dec. 15, 1971	Jo Margueritte Hickman	Margo Jo Hickman	Harlowton
Dec. 20, 1971	Chester Edward Erdmann	Chester Edward Meachum	Yellowstone County
Dec. 20, 1971	Jeanne Marie Erdmann	Jeanne Marie Meachum	Yellowstone County
Dec. 20, 1971	Chester Edward Erdmann, Jr.	Chester Edward Meachum, Jr.	Yellowstone County
Dec. 20, 1971	Cheryl Lynn Erdmann	Cheryl Lynn Meachum	Yellowstone County
Dec. 20, 1971	John Victor Erdmann	John Victor Meachum	Yellowstone County
Dec. 22, 1971	David Anthony Lahey	David Anthony Montgomery	Yellowstone County
Dec. 22, 1971	Joan Willis Scott Manning	Joan Willis Hartwig Manning	Great Falls
Dec. 22, 1971	Patsy Lou Scott	Patsy Lou Hartwig	San Diego, Calif.
Dec. 22, 1971	Jacqualine Lee Hatzenbuehler	Jacqualine Lee Alford	Helena
Dec. 27, 1971	Dorothy Florence Blattspieler	Dorothy Lucile Blattspieler	Helena
Dec. 29, 1971	Annabelle R. Lunda	Annabelle R. Adams	Shelby
Jan. 5, 1972	ClaraFrances Carlson	Clara Frances James	Browning
Jan. 5, 1972	Mary Alice Carlson	Mary Alice James	Browning
Jan. 11, 1972	Donna Viola Rummel	Donna Viola Pauley	Flathead County
Jan. 24, 1972	Michael Louis Peting	Michael Louis Sutter	Martin City
Jan. 26, 1972	Bertha E. Thrash	Bertha E. Hall	Flathead County
Jan. 31, 1972	Dona Martin	Dona Atwater	Miles City
Feb. 4, 1972	Barbara J. Derenburger	Barbara J. Burley	Jordan
Feb. 25, 1972	Elmer Mutschelknaus	Elmer Mitchum	Helena
Feb. 25, 1972	Shirley A. Mutschelknaus	Shirley A. Mitchum	Helena
Feb. 25, 1972	Edward Joseph Mutschelknaus	Edward Joseph Mitchum	Helena
Feb. 28, 1972	Mervin Arnold Emerson	Michael A. Emerson	Bozeman
Feb. 28, 1972	Lyle Watson Schlosser	Lyle Watson Coleman	Cascade County
March 14, 1972	Bonita P. Eldridge	Bonita P. Sheffer	Thompson Falls
March 31, 1972	Lucille Fay Robbins	Lucille Fay Matthaes	Hamilton
March 31, 1972	Dale Edward Robbins	Dale Edward Matthaes	Hamilton
April 7, 1972	Michael Kathleen Hosfield	Michael Kathleen Zimmer	Yellowstone County
April 13, 1972	Ernest Medina	Ernest Johnson	Butte
April 13, 1972	Bufford C. Griffen	James Charles Baker	Missoula
April 24, 1972	Gertrude Marie Fellows	Marie Gertrude Fellows	Bozeman
April 26, 1972	Anna Antonia Vaccarino	Anna Antonia Sofia	Cascade County
May 1, 1972	Jeffrey Alan Parker	Jeffrey Alan Osborne	Missoula
May 2, 1972	Gregory Dean Bessire	Gregory Dean Schwarz	Missoula
May 8, 1972	Lonnie Rae Mack	Lonnie Rae Ewan	Bozeman
May 8, 1972	Linda Irene Mack	Linda Irene Ewan	Bozeman
May 10, 1972	Richard Maurice Crummett	Richard Charles Clawson	Yellowstone County
May 18, 1972	Margaret Glenne Wyatt	Marguerite Glenne Wyatt	Missoula
May 26, 1972	Ralph Ferdinand King	Ralph Ferdinand Brown	Hamilton
May 31, 1972	Laura Louisa Vietz	Laura Louisa Moore	Yellowstone County
June 2, 1972	Gary Lee Carroll Hill	Gary Lee Baker	Miles City
June 5, 1972	John Francis Williams	Jack Russell Brubaker	Yellowstone County
June 7, 1972	Luther Daune Neal	Luther Dwayne Bellon	Anaconda
June 7, 1972	Scott Joseph Mad Plume	Scott Joseph Hall	Browning
June 7, 1972	Michael Dean Fletcher	Michael Dean Swenson	Lake County
June 8, 1972	Cary Ray Collins	Cary Ray Veis	Scobey
June 8, 1972	Bradley Clay Collins	Bradley Clay Veis	Scobey
June 12, 1972	David Michael Pfauth	David Halley	Bozeman
June 20, 1972	Buryldean Cooper	Buryldean LeFebvre	Cascade County
June 21, 1972	Charlotte Rae Dale	Charlotte Rae Oshio	Malta
June 22, 1972	Darrel Ray Weber	Darrel Ray Davis	Missoula
June 26, 1972	Eva Martindale	Eva Baumeardner	Miles City
June 27, 1972	Mary E. Almli	Mary E. Gauthier	Hot Springs
June 28, 1972	Deborah Ann Munoz	Deborah Ann Atkinson	Cascade County

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Date of Judgment	Original Name	Name Decreed	Residence
June 28, 1972	Robert Munoz	Robert Francis Munoz Atkinson	Cascade County
June 28, 1972	Susan Elizabeth Munoz	Susan Elizabeth Munoz Atkinson	Cascade County
June 29, 1972	Albert Peter Wacker	Albert Pete Walker	Glasgow
June 30, 1972	Dora Irene Meade	Dorothy Irene Meade	Helena
July 5, 1972	Arnold Douglas Betts	Arnold Douglas Lilley	Judith Gap
July 7, 1972	Bradley James Payne	Bradley James Gorton	Helena
July 19, 1972	Esther D. Bolton	Esther D. Nordquist	Rice Lake, Wisc.
July 21, 1972	Karen Kay Zion	Leslie Jean Zion	Helena
July 21, 1972	Ella J. Klemme	Ella J. McKee	Malta
July 31, 1972	Richard Edward Farrell	Chris Cross	Missoula
Aug. 8, 1972	Ethel D. Wharram	Ethel D. Walker	Highwood
Aug. 9, 1972	Edwin Roy Wells	Edwin Roy Salois	Browning
Aug. 14, 1972	Fred Clinton Craw	Fred Clinton Hansen	Missoula
Aug. 14, 1972	Mary Ellen Currens	Mary Ellen Goard	Miles City
Aug. 16, 1972	Dawna Kailine Merchant	Dawna Kailine Kranzler	Yellowstone
Aug. 22, 1972	Helen G. Hunt	Helen G. Kirschbaum	Hot Springs
Aug. 25, 1972	Gloria Ann Lenz	Gloria Ann Blood	Lake County
Aug. 25, 1972	Helen M. Gaught	Helen M. Fletcher	Miles City
Aug. 28, 1972	Lila Kay Pendley	Lila Kay Pierce	Miles City
Sept. 5, 1972	Gary Andrew Hallet	Gary Andrew Parks	Philipsburg
Sept. 6, 1972	Margaret Mary O'Connor a/k/a Sister Mary Dorothy O'Connor	Marguerite O'Connor	Cascade County
Sept. 6, 1972	Virgil Miles Berger	Virgil Miles Napier	Cascade County
Sept. 8, 1972	Evelyn Rosebell Steber	Florence Rosebell Steber	Butte
Sept. 8, 1972	Daniel B. Moore	Daniel B. Maney	Cascade County
Sept. 14, 1972	Roxie A. Duffey	Roxie A. Krause	Helena
Sept. 20, 1972	Lisa Barrios	Lisa Yellow Owl	Browning
Sept. 27, 1972	Carmel Heydon	Carmel Olson	Chester
Oct. 6, 1972	Rafaelita Jose Reyes	Rafaelita Gonzales Jose	Lincoln
Oct. 12, 1972	Daneil Helen Simons	Daneil Helen Summers	Great Falls
Oct. 16, 1972	Joseph Michael Huber	Joseph Michael Linderman	Lustre
Oct. 16, 1972	Michael Paul Moolick	Michael Paul Mulkey	Yellowstone
Oct. 16, 1972	Pamala Kay Moolick	Pamala Kay Mulkey	Yellowstone
Oct. 18, 1972	Ralpha Wright	Ralpha Smith	Malta
Oct. 20, 1972	Alicia Marice Baele	Alicia Marice Barker	Madison County
Oct. 20, 1972	Mark Denny Millar	Mark Denny O'Connor	Ravalli County
Oct. 24, 1972	Margaret M. Warren	Margaret M. Whisennand	Plains
Nov. 1, 1972	Ramona C. Lulf	Ramona C. Albus	Saco
Nov. 8, 1972	Gary Russel Barnes	Gary Russel Dolsman	Yellowstone County
Nov. 8, 1972	Tonette Chantel Barnes	Tonette Chantel Dolsman	Yellowstone County
Nov. 8, 1972	Leslie Studhorse a/k/a Leslie Andrew Many Guns	Leslie Andrew Munro	Browning
Nov. 9, 1972	Mildred Agnes Heavyrunner	Mildred Agnes Dwello	Kevin
Nov. 9, 1972	Robert Joseph Piotrowski	Robert Joseph Peters	Deer Lodge
Nov. 17, 1972	Beatrice Kay Rodriquez	Bee Gee Kathline Rodriquez	Eureka
Nov. 21, 1972	Alice L. Lee	Alice L. Matthews	Shelby
Nov. 28, 1972	Amanda Jo Scheidecker	Amanda Jo Merrick	Helena
Dec. 7, 1972	Brenda Sue Birdwell	Brenda Sue Moran	Missoula
Dec. 8, 1972	Patricia E. Allread	Patricia E. Mysse	Miles City
Dec. 8, 1972	Derek William Lindbom	Derek William Stanisich	Butte
Dec. 18, 1972	Kenneth James Herbster	Kenneth James Pena	Glendive
Dec. 20, 1972	Anneliese O'Neil	Anneliese Caballero	Malta
Dec. 20, 1972	Afton M. Black	Afton M. Knight	Miles City
Dec. 22, 1972	David Wayne Tanner	David Wayne Nance	Billings
Dec. 22, 1972	Kathy Jean Tanner	Kathy Jean Nance	Billings
Dec. 22, 1972	Robert Stephen Tanner	Robert Stephen Nance	Billings
Dec. 22, 1972	Michael Aaron Tanner	Michael Aaron Nance	Billings
Dec. 28, 1972	Loreta Brown	Loreta Lynn Coggin	Bainbridge, Georgia

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APPENDIX

REFERENDUM NO. 68

CHAPTER NO. EX 2-9

MONTANA SESSION LAWS 1971

Sales and use tax for support of state government, failed to be approved at the Special General Election, November 2, 1971, by the following vote:

For: 66,967

Against: 154,680

The Official Canvass of votes for the Proposed Constitution for the State of Montana, adopted March 22, 1972 by the Constitutional Convention and submitted to the voters at the Separate Election for the Ratification or Rejection of the Proposed Constitution and Related Questions, held on June 6, 1972, is as follows:

PROPOSED CONSTITUTION

For: 116,415

Against: 113,883

UNICAMERAL LEGISLATURE, For: 95,259

BICAMERAL LEGISLATURE, For: 122,425

ALLOWING LEGISLATURE OR PEOPLE TO AUTHORIZE GAMBLING

For: 139,382

Against: 88,743

DEATH PENALTY

For: 147,023

Against: 77,733

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Chapter 159, Laws of 1971, amending Section 2, Article IX of the Constitution of the State of Montana, changing the legal voting age to eighteen (18) years of age, changing the period of residence to thirty (30) days and deleting the requirement that a voter be a taxpayer on certain issues, failed to be approved at the General Election, November 7, 1972, by the following vote:

For:	116,496
Against:	125,026

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